Supreme Court, U.S.
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No. 07-863

In The

SUPREME COURT OF THE UNITED STATES

GEORGE RAM LAMA,

Petitioner

v.

FRED MEYER, INC.,

Respondent

On Petition for Writ Of Certiorari
To The United States Court of Appeals

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

(i) I am dumfounded. Both lower Court ruling are not justified. Lower Courts erred in finding the facts and evidence that I filed in the Court system (DK#8, 29, 31). WHRC had three meeting with Company and their Attorney. But they did not show up all of the meeting. In the first case, when I went to WHRC and ask what is next. They told me that WHRC not going to investigate any more and told me, I do not have case any more. Therefore no investigation was done at all.

(ii) Company and their Attorney never give me any information about their company and employees. WHRC, EEOC, WA. UNION and CO. Attorney did not give me any information that I requested both cases. There is no way I can litigate in the court. I am a Clerk not an Attorney. They all unfairly denied all information I needed. All of them and Washington State were against one person that is me. Also whenever I request for information CO. and their Attorney rush to judgment both cases.

(iii) There is a difference between National Origin and AGE. This is a new word. And new case. This word AGE was not in first case. I should be able to litigate.

(iv) Judicial Estoppels does not apply in my case. My chapter-7 was filed pre-petition. Law allows me go ahead on my lawsuit. Johnson v. Si-cor inc. 107 wn. App. 902 (2001)

(v) *Res Judicata* does not apply in case. AGE and National Origin are very different words and different meanings. Company and their Attorney never give me information needed for litigation. There were never been fair and justified litigation in my cases.

(vi) It is not a same claim decided in the prior suit. This was a new claim as a AGE discrimination. The rule that successors in interest have privity for purposes of *Res judicata* is not applicable where the previous action involved a national organ right as opposed to a AGE discrimination.

(vii) South center joint venture v. Nat'l Democratic policy comm.. 113 Wn. 2d. 413, 418, 780 P. 2d 1282 (1989)

(viii) Judgment was not in good faith and did not have fair and fully litigated under law allowed. Also their Attorney, WHRC, EEOC, and local union withhold all information I needed. Proposes of *Res Judicata* denotes only privacy as it exists in reference to the subject matter of the ligation.

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INTRODUCTION AND OPINIONS

I, George Ram Lama, request the Supreme Court of the United States to review the Age Discrimination case that I filed a second time on March 9, 2005. This lawsuit is very different from the first one. Also, I request the Court to review the Lower Court's decision as well. This District Court's decision was dated on the 8th day of March, 2006 and the United States Court of Appeals decision was dated on the 9th day of July, 2007. I am petitioning for a Writ of Certiorari in my case.

My first lawsuit was national origin only and I have the evidence to provide to the Court. The second lawsuit was age discrimination and aging retaliation while I was working with the company.

Res judicata does not apply in my case because I applied for a job with the same company in file different cities where they do business. While I was working for the company over three and a half years, I had more than four directors and more than four managers and assistant managers as the management would change every six months.

I submitted over thirty applications for different positions or in different locations during the three and a half years while I worked for this company. The company refused all my applications and refused to interview me or consider me for any additional training or promotions. While I was working at the company, I was never given a full-time job.

When I went to EEOC for the third time on January 22, 2004, the EEOC officer told me that she would take the report of my complaints between June 1, 2003 and October 24, 2003. The EEOC officer would not accept any further complaints from me

despite the fact that the actions of the employer occurred for the entire time I was employed.

In January 2005, the EEOC officer called me and stated that the employer would not supply any information regarding my case. The EEOC officer suggested that I go to court and issued me a right to sue letter on January 6, 2005. Title VII, the Americans with Disabilities Act and Age Discrimination in Employment Act allows for the right to sue within 90 days of receipt of EEOC notice.

I filed the age discrimination and aging retaliation lawsuit in United States District Court on March 9, 2005 at 1:00pm. I consulted with over fifty private attorneys and was unable to find anyone to take my case. I represented myself, as I was unable to find legal representation to take my case in the state of Washington.

My case was filed post-petition bankruptcy Chapter 7. My bankruptcy attorney filed paperwork in the morning of March 9, 2004. I filed my age discrimination case on the same day in the afternoon. This is called post-petition.

Washington Court has applied this doctrine only to claims that arise prior to a petition in bankruptcy. Claims that arise during and after the bankruptcy petition is filed do not have to be disclosed and are not barred by judicial estoppels. For example, a plaintiff who chipped his tooth after biting into a sandwich at a defendant's restaurant during the pending of his bankruptcy proceeding but not prior to discharge was allowed to maintain a personal injury action post-discharge. Johnson vs. Si-cor Inc. 107 app. 902 (2001).

Therefore, *res judicata* does not apply in this case of age discrimination and aging retaliation and

Should be reconsidered and Writ of Certiorari issued.

Because of my age and political beliefs, The Company and their attorney's watch, I became helpless, penniless and homeless, and I had no choice but to leave Washington State for better or worse. I hope and pray for fair justice from the Supreme Court of the United States of America.

Date: Wednesday, November 28, 2007

Pro se

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JURISDICTIONAL STATEMENT
QUESTION PRESENTED

Appellant George Ram Lama and Company and their attorney had three meeting at the WHRC's Seattle office in Washington State. No body came for all three meeting. I went WHRC office and ask what's next. Officer of office told me that there will be no meeting, no investigation and I have no case and it is dismiss. Some how, WHRC fired the intake officer. I could not get any information from Company and their attorney, Union and WHRC. Therefore there was never fairly and fully litigation on my first law suit. Court never amended Retaliation or any other request I made.

My second law suit about Age discrimination. Now I am 58 years old. Age discrimination is new one. It was not in the first law suit. *Res judicata* does not apply in my second case, because different matter and different subject. Also I did not get fair and fully litigation. I could not get any information from the CO. Attorney. Union and WHRC. Their attorney rushed to judgment.

Retaliations had not been litigated before and not been amended. So I should be able to litigate fairly and fully in the Court system. Also Defendant knows that I am not an Attorney. He dismiss me easily (ignore).

STATEMENT OF THE CASE

AGE discrimination: Federal law prevents from discriminating against job applications and employment on the basis of AGE. The best known example of the laws, the federal Age discrimination in employment Act (ADEA), prohibits employers from discriminating against employees and applications who knew 40 years of age and older based on their Age. The ADEA is very clear on its prohibitions, some of which are summarized here for quick reference. Retaliation, unlawful employment practice, promotion, promotion, refused job applications, hiring, firing, layoff. job training, job assignments and benefits. These are all unlawful to discriminate any employees under AREA and Federal law. Also workers who takes action under ADEA con not be discriminated against for filing, testify at, participating in claim an employer.

Company and their Attorney opposed all of the above on me and refused every thing I requested for new jobs, transfer, promotions, better pay and better job. They are violation of all the laws of AGE discrimination. This went on more than three years.

Company is violation of Fair Labor Standers Act of 1938, 29 USC Sec. 206(b)

Age discrimination ADEA, Civil right Act of 1967 and 1991 and WRC 49. 60. 030.

Within three half years, Company hired thousands younger employees and gave better job and better pay. I have the proofs to prove the court.

Retaliation agenized a person who files a charge of discrimination, participates in an investigation, or opposes an unlawful employment practice is

prohibited by all of the federal Law. Fair Labor Law Act of 1938. 29. USC. Sec.206(b).

All of the above are retaliations against me for more than three years.

Separation was a necessary violence as defined by RCW 26. 50. 010.

Deterioration of work and unreasonable hardship under WAC 192-150-125

They are violations of the 1st, 5th, 6th and 14th amendments.

Please check this case: Date 1/4/2006, Doyle Baker v. Private-Air.

Superior Court, Los Angeles County, California. Mr. Baker sued Private-Air on AGE discrimination. Date 12/21/2001. Case: Marjati Winarto v. Toshiba. Case number 99-55448.

Court: United State Court of Appeals for the Ninth Circuit

Date. 6/16/1999. Case: Virginia M Marques v. Bank of America. Case Number 96-CV-1932.

Court: United District for the Northern district of California.

REASONS FOR GRANTING THE WRIT

I, Company and their attorney whitewashed every thing all the way to the District Court and Ninth Circuit Appeal Court.

II, This case has never been fully litigated. The Company, Attorney, WHRC, EEOC and the local Union never gave me any information nor did they investigate.

III, Judicial estoppels does not apply because of pre-petition of my chapter-7

IV, *Res Judicata* does not apply in my case. There should be fully and fairly litigated. Age Discrimination was not a part of the original case that should have been able to litigate.

V. They never gave me a full-time job and promotion. But the company gave full-time jobs and promoted thousands of other employees. I am one of the best workers and have lots of knowledge in the retail business areas.

VI. The company demoted me as a water boy outside the garden in 80 to 90 degree heat with no breaks and no water to drink for about two years until I got sick. Retaliations never stopped even if I was in court system. Federal law prohibits retaliation against individuals who have exercised their right to protest acts they believe violate the law enforced by the Commission.

VII. The company is in violation of these laws: EEOC and Fair labor Standards Act of 1938, 29 USC Sec. 206(b); ADEA age discrimination, Human Rights, Civil Rights Act of 1967 and 1991 and WRC 49.60.030; violations of 1st, 5th, 6th and 14th amendments. They took away my liberty and pursuit of happiness and left with pain and suffering.

VIII. The Supreme Court passed three laws between 2005 and 2006. I hope these laws apply to my case.
i. Justice rule for over 40, pages #66-67
ii. Court expands right to sue over retaliation, pages #68-71
iii. Firing is not the condition, pages #72-74

Therefore I hope and pray that the United States Supreme Court will grant me a writ.

CONCLUSION

The district court and Appeal court were not fair and correct dismissing Lama's cases. My first case was National Origin and courts refused all of my request to amend.

When court refused to amend my Retaliations, I went to EEOC to report if the can help me. I filed Age Discrimination and Retaliations' which was on going more than three years. After a year time EEOC give me right to sue letter which is Age discrimination. I filed the suit within 90 days.

I filed my chapter-7 same day pre-petition. So Judicial stopple does not work. *Res judicata* also does not work because Company and their attorney filed to come to three meeting at WHRC. I could not get any information from their attorney.

I. I could not find an attorney in Washington State who would take my case.

II. WHRC fired my intake officer and told me that I do not have a case and they are not going to investigate and give me any information.

III. WHRC, EEOC, Local Union and Company's attorney gave me no information about company and their employees. There has not been fair litigation on my first and second cases.

IV. My first suit was national origin and second suit was age discrimination and retaliation. This went on forever. I should be able to litigate age and retaliation in the court.

V. To apply *res judicata* there should be fair and fully litigated in the court system. This never happened in both cases.

VI. There are in violation of all these laws. ADEA age discrimination, retaliation, EEOC and fair labor law act of 1938, 29 SUC Sec. 206(b) Human Rights, Civil Rights and 14th Amendment.

APPENDIX

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STATEMENT OF THE CASE
BACKGROUND

I, George Ram Lama, am a former employee of Defendant Fred Meyer. I worked for the company from August 14, 2000 to December 30, 2003. I was 55 years old and I am from Nepal. I went to EEOC to report what has been going on at the work place because the Court would not amend my request for Retaliation and age discrimination.

Due to hard times at work, I got sick for three months. I was under a doctor's care. I have a letter from a doctor and I have submitted to the court a copy of it.

I filed Chapter 7 because I did not have any money to pay my bills.

On March 24, 2002, I filed a complaint alleging National origin discrimination WHRC. Human Rights office scheduled three meetings between the three of us. The company and their Attorney never showed up at all of the meetings. When I went to WHRC, they told me that there won't be any investigation and you do not have a case. So first case WHRC and EEOC never investigated my case. At the same time, I went to EEOC for any information. First they said no. After a few months, they sent me a sue letter saying that they have no finding of evidence. WHRC was the lead investigator. They already told me that I do not have a case. No further investigation. (Something happened in the WHRC office.) So company and court knew that I have nothing to go on. I have no report from WHRC.

The company and their Attorney try to same thing as before the second law suit. I talked to about more than three EEOC officers. Also it is not local, it is

federal office. I still did not get any information from EEOC. But I know I talked to them many times before. All agency, attorneys, company and unions worked as a team. They all were against George Ram Lama. Therefore, there was no way I could get fair and full litigation in court system of Washington State. I was derailed by all of them and their system.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

GEORGE RAM LAMA, Plaintiff, v. FRED MEYER INC. Defendant.	CASE NO. C05-385C ORDER Filed March 8, 2006

This matter comes before the Court on (1) defendant's motion for Summary Judgment(Dkt. No. 14 (Def.'s Mot."). Plaintiff's responsive documents (Dkt. Nos. 21,23,24 ("pl.'s 1st Opp'n"). defendant's Reply (dkt. No 28 (Def.'s reply"), and Plaintiff's objection thereto (Dkt. No 29)("Pl.'s 2nd Opp'n; and (2) this court's December 21, 2005 Show cause Minute Order (Dkt. No. 30) and the papers filed in response thereto (Dkt. Nos 31"Pl.'s OSC Resp."). 32 (Defs.'OSC Opp'n") and 34 (Pl.'s OSC Reply"). The Court has considered the papers submitted regarding summary judgment and determined that oral argument is not necessary. The Court herby finds and rules as follows.

1. BACKGROUND

Plaintiff George Ram Lama is a former employee of Defendant Fred Meyer- Plaintiff worked for Defendant from August 14, 2000 to March 11, 2004. He is 55 years old and of Nepalese origin. The instant suit is Plaintiff's

second against Defendant. Plaintiff is also is a debtor in bankruptcy proceedings in the Western District of Washington wherein his debts were discharged 11 U.S.C. 727. Plaintiff proceeds pro se in instant litigation.

On March 24, 2002, Plaintiff filed a complaint alleging national origin discrimination with the equal Employment Opportunity Commission (EEOC") and the Washington State Human Rights commission ("WSHRC"). This complaint resulted in determinations by both agencies that there was no reasonable cause for Plaintiff's discrimination charge. (see Def.'s Mot., Dickens Decl. Exs. 1,2) Upon receipt of his right-to- sue letter. Plaintiff filed, in January 2003, an employment discrimination action against Defendant Fred Meyer and its employees (who were later dismissed). See C03-49R, Order (Dkt. No 17); Def.'s Mot., Dickens Decl. Ex 3 (c03-49R, Amended Complaint).)

On January 8, 2004, this court granted Fred Meyer's motion for summary judgment and dismissed all claims against it. (Def.'s Mot., Dickens Decl. Ex 4 (C03-49MJB, Order).), The Court ruled in the first case that Plaintiff failed to exhaust his administrative remedies as claims of failure to promote, race/color discrimination, religious discrimination, and political interest discrimination, and therefore the Court had no subject matter jurisdiction to consider such claims. (id.) The Court also granted summary judgment on the national origin discrimination claim, finding that Plaintiff failed to make out a hostile work environment claim. (Id.) the Court then ruled on Plaintiff's late-addition retaliation claim,

finding that the record contained "no Showing a causal link between the protected activity and the adverse action," which precluded a *prima facie* case of retaliation (*Id.* At 8.) Plaintiff appealed, but the Ninth Circuit affirmed the dismissal, (*Id.* Ex. 6.) Defendant was awarded $807.33 in costs in that case on February 5, 2004. (*Id*, Ex. 5.)

Following the final judgment in his first case against Fred Meyer, Plaintiff filed a second complaint with the EEOC and WSHRC on January 22, 2004. (*Id.*, Ex. 7.) He again claimed retaliation, relying on facts that occurred before the dismissal of his first case, and again claimed national origin discrimination. (*Id.*) A new claim was made regarding *age* discrimination as well, though the acts alleged to support this charge also fell between June 1, 2003 and October 24, 2003—a period completely within the pendency of his first action (which began on January 10, 2003 and was dismissed on January 8, 2004). (*Id.*)

While that discrimination complaint was pending before the EEOC, Plaintiff filled a Chapter 7 bankruptcy petition on March 9, 2004. (*Id.* Ex. 9 (04-13139KAO, Petition, Schedules, and Statements).)[1] On June 16, 2004, Plaintiff's debts

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[1] Plaintiff was represented by an attorney in the bankruptcy matter. (*Id.*) The bankruptcy petition included references to Plaintiff's costs debts from his first lawsuit against Defendant (*see id.*(Schedules B, C; Statement of Financial Affairs)), but the petition did *not* contain any information about the then-active investigation on Plaintiff's second charge of action against Defendant (*id.* (Statement of Financial Affairs)). Specifically, the Statement of Financial Affairs instructed the debtor to "[l]ist all suits and

were discharged. (*Id.* Ex. 10(04-13139LAP), Discharge of Debtor).) Thereafter, the EEOC dismissed Plaintiff's second complaint, again unable to find a violation; Plaintiff's second right-to-sue letter was dated January 6, 2005. (*Id.* Ex. 8.) On March 9, 2005, a year after he had filed for bankruptcy, Plaintiff initiated the instant civil action alleging employment discrimination against Defendant, seeking "$1.4 million or Back pay, future pay and Punitive damages." (Complaint (Dkt. No. 1).) Specifically, Plaintiff now seeks damages for failure to promote, harassment/profiling, retaliation, race/color discrimination, national origin discrimination, and age discrimination (*Id.*)

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administrative proceedings to which the debtor is or was a party within one year immediately preceding the filing of this bankruptcy case.' (*Id.*) The only proceeding listed in response was the taxation of costs for Plaintiff's first lawsuit against Defendant. No mention was made of the open EEOC proceeding. Nor was the possible claim against Defendant listed as an "asset" anywhere else on the petition.

ANALYSIS

A. Summary Judgment Standard

Rule 56 of the Federal Rules of Civil Procedure governs summary judgment motions, and provides in relevant part, that "[t]he judgment sought shall be rendered forthwith if the pleadings, depositions. Answers to interrogatories, and admissions-on-file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed.R.Civ.P. 56(c). In determining whether an issue of fact exists, the Court must view all evidence in the light most favorable to the non-moving party and draw all reasonable inferences in that party's favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-50 (1980); *Bagdadi v. Nazar*, 84 F.3d 1194, 1197 (9th Cir. 1996). A genuine issue of material fact exists where there is sufficient evidence for a reasonable factfinder to find for the non-moving party. *Anderson*, 477 U.S. at 248. The moving party bears the burden of showing that there is no evidence which supports an element essential to the non-movant's claim. *Celorex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). Once the movant has met this burden, the non-moving party then must show that there is in fact a genuine issue for trial. *Anderson*, 477 U.S. at 250. Thus, the inquiry on a motion for summary judgment is "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." *Anderson*, 477 U.S. at 251-52.

B. Issues on Summary Judgment

Defendant seeks dismissal of all claims against it on three grounds. First, Defendant argues that Plaintiff's suit is barred by the doctrine of judicial estoppels because Plaintiff failed to notify the bankruptcy court of his possible causes of action against Defendant- the theory is that Plaintiff should not be allowed the double benefit of having had his debts discharged without regard for the value of the instant claims (which he knew about before filing for bankruptcy) while now being allowed to pursue those claims debt-free and outside bankruptcy proceedings. Second, Defendant arguers that Plaintiff does not have standing to bring the claims in this suit in any event, because he had a duty to disclose the claims to the bankruptcy court, did not do so, and as a result of that failure, the bankruptcy trustee is the real party in interest. Third, Defendant argues that *Res judicata* bars Plaintiff's current suit altogether. Because the *Res judicata* argument is dispositive, as below, the court need not reach the standing or judicial estoppels argument.

C. *Res judicata* and Subject matter Jurisdiction

In general, the doctrine of *res judicata* bars a second suit on the same claim or on different claims arising from the same facts. Thus, the bar reaches both grounds of recovery that were asserted and those that were not asserted but could have been.

Int'l Union of Operating Eng'rs v. Karr, 994 F. 2d 1426, 1429 (9th Cir. 1993). The 3-part test for

res judicata asks whether the earlier suit (1) involved the same claim or cause of action as the later suit, (2)

Reached a final judgment on the merits, and (3) involved identical parties or privies. " Mpoyo v. Litton Electro-optical Systems, 430 F. 3d 985, 987 (9thCir. 2005) (quoting Sidhu v. Flectro Co, 279 F. 3d 896, 900 (9th Cir. 2002)).

As to the first element ("same claim"), the Court must consider the following factors: (a) "whether the two suits arise out of the same transactional nucleus of facts"; (b) "whether rights or interests established in the prior judgment would be destroyed or impaired by prosecution of the second actions"; (c) "whether the two suits involved infringement of the same right"; and (d) "whether substantially the same evidence is presented in the two actions." *Id.* (citing, *Chao v. A-One Med. Servs., Inc.*, 346 F.3d 908, 921 (9th Cir. 2003)). Whether the two suits arise out of the same "transactional nucleus of facts" is considered the most important of the foregoing factors, often becoming "outcome determinative" as to the first *res judicata* element. *Mpoyo*, 430 F.3d at 988.

The "nucleus of facts" factor is significant in this case. Plaintiff's claims here, as in his prior lawsuit, center on Defendant's conduct regarding "profiling," suspending, refusing to promote, and assigning certain work to Plaintiff. The period of time in which these events allegedly occurred (according to the EEOC complaint underlying the instant suit) ends in October 2003, which is *prior* to the dismissal of the Plaintiff's first suit. Thus, Plaintiff clearly could have raised all of his claims

in the first lawsuit, either with the EEOC or with the Court.

This Court had no subject matter jurisdiction in the first lawsuit to consider claims on the merits that were not raised properly before the EEOC prior to commencing the first lawsuit. These included the claims for failure to promote, race/color discrimination, religious discrimination, and political interest discrimination. However, this Court did consider the national origin and retaliation claims on the merits, granting summary judgment for Defendant because Plaintiff could not make out the basic elements of those claims. Thus, the only claim at issue here that was *not* addressed by the Court in the first lawsuit is the *age* claim that Plaintiff now raises. However, here too, Plaintiff fails to raise a genuinely new claim, because the age discrimination claim arises out of the same nucleus of facts and period of conduct as all of the other claims from the first lawsuit. Plaintiff could have raised the age claim in the first lawsuit, but he did not do so. Therefore, *all* conduct alleged in the instant suit that occurred prior to October 2003 already was litigated or could have been litigated in Plaintiff's first lawsuit.

Plaintiff's attempt to escape the "nucleus of facts' test by characterizing his current retaliation and failure-to-promote claims as involving "new" conduct occurring in 2004 (*i.e.*, after October 2003) (Pl.'s OSC Resp. 3-4) fails because he has not

exhausted his administrative remedies as to conduct after October 2003. The EEOC complaint underlying the instant suit makes no mention of conduct after October 2003 (*see* Def.'s Mot., Dickens Decl. Ex. 7), so this Court lacks subject matter jurisdiction to consider any claim based on any conduction in 2004. *Lyons v. England*, 300 F.3d 1092, 1103 (9th Cir. 2002); *B.K.B. v. Maui Police Dep't*, 276 F.3d 1091, 1099 (9th Cir. 2002).

The foregoing "nucleus of facts" inquiry favors a finding that the current suit involves the "same claim" as the prior suit. The other relevant factors favor such a finding as well. First, Plaintiff's current suit involves claims about rights that already have been determined—this Court's determination that Defendant could not be held liable for national origin discrimination or retaliation in the prior lawsuit would be "destroyed" if the present suit is allowed to continue. Second, the "same rights" are raised here as before, with the exception of the age claim (which should have been joined before) and the post-October 2003 claims (over which this court lacks jurisdiction). Finally, as to the claims involving pre-October 2003 conduction, the "same evidence" presented here also was presented (or could have been presented) in the prior lawsuit and/or in the prior administrative proceeding.

Considering all four factors going to the "same claim" element of the *res judicata* test, the Court finds that, to the extent that the underlying conduct extends through October 2003, Plaintiff's current suit does involve the "same claim" as his prior lawsuit. Any such claim that was not

actually brought in the first lawsuit *could have been brought* therein. Further, regarding conduct after October 2003, this Court lacks subject matter jurisdiction due to Plaintiff's failure to exhaust administrative processes.

The second and third elements of the *res judicata* test are satisfied here as well. As to the second element, summary judgment dismissal of the first suit generally "is considered a decision on the merits for *res judicata* purposes.' *Mpoyo*, 430 F.3d at 988 (citing *Hells Canyon Pres. Council v. U.S. Forest Serv.*, 403 F.3d 683, 686 (9th Cir. 2005)). Any claims administratively raised in the current suit were capable of being brought in the first suit that was dismissed with prejudice. Likewise, the third element—identical parties—is established, because both Plaintiff and Defendant were in identical postures in the prior litigation.

For the foregoing reasons, all of Plaintiff's claims depending on conduct that occurred through October 2003 must be dismissed under the doctrine of *res judicata*, and all of Plaintiff's claims depending on conduct that occurred after October 2004 must be dismissed for lack of subject matter jurisdiction. Viewing the facts in the light most favorable to Plaintiff, it is clear that he has failed to raise any genuine issue of material fact that would preclude dismissal of his claims as a matter of law. Because no claims can survive the *res judicata* and subject matter jurisdiction inquiries, the Court need not address Defendant's judicial estoppel or standing arguments.

UNITED STATE COURT OF APPEALS
FOR NINTH CIRCUIT

No. 06-35276

D.C. No. CV-0500385-JCC

MEMORANDUM

Appeal from the United State District of Washington
John C. Coughenour, Chief District Judge, Presiding

Submitted July 9, 2007

BEFORE: LEAVE, THOMAS, and BERZON,
CERCUIT JUDGES

George Ram Lama appeals pro se from the District court's summary judgment in his Title VII action alleging that this former employer, Fred Meyer, Inc, discriminated against him based on his national origin and Age, and retaliation. This position is not appropriate for publication and is not precedent except as provided by 9th. Cir. R. 36-3.

The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2) against him for complaining about harassment. We have jurisdiction under 28 U.S.C.$ 1291. We review de novo, Buono v. Norton, 371 F. 3d 543, 545 (9th Cir2004), and we affirm.

The discretion of the court properly dismissed Lama's claim of retaliation and discrimination based on his national origin because these claims were considered and rejected in prior action for failure to

establish a prima facie. See id. At 1192(doctrine of *res judicata* bars a claim where there is an identity of claims, an identity of parties, and final judgment on the merits). District court properly dismissed Lama's claim of Age discrimination because Lama could have raised that claim in his prior action. Under *res judicata* all grounds for recovery which could have been asserted, whether they were or not, in a prior suit between the same parties on same cause of action. To the extent Lama's complaint alleges that defendants discriminated against him in 2004, the discretion of court properly dismissed his claim for lack of subject matter jurisdiction because Lama did not exhaust his administrative remedies with the EEOC as to any conduct alleged to have occurred after October 2003.Federal subject matter jurisdiction requires a plaintiff to exhaust administrative remedies before seeking adjudication of Title VII claim by filing a timely with EEOC. Lama's remaining contention lacks merit. AFFIRMED.

NOTICE OF CIVIL APPEAL

CASE NO. 06-35276

Plaintiff George Ram Lama requests to the United State Court of Appeals for the Ninth Circuit, to Appeal the final judgment dismissing my claim. Also request that Docket #8, 23, 29, and 31 receives further review.

I will represent myself in this matter due to unaffordable and I could not find an Attorney who will work on my case.

Plaintiff lost 3 days 2 vacation days and also lost a secondary job due to unwanted suspension. Plaintiff

was forced to file a chapter-7 in March 2004 as a direct result of mental degradation, retaliation and Age discrimination and retaliation by defendant

For earlier protected activity. Unlawful demotion with out cause, and without notice. Discrimination in hiring by defendant, in that plaintiff both refused and denied opportunity during the application and interview process with 5 stores in King County, State of Washington. Misuse/ misappropriation of plaintiff benefits by defendant management and attorney

refused to provide plaintiff access or copy of personal file for approximately 6 months, thus violating rule in the discovery process. When finally received, critical documents had been removed, in fact more than half of personnel file was missing.

EEOC informed me that they would provide law suit letter, but ignored all provided evidence. Defendant was in fact paid $807.33 which split cost between the defendant and plaintiff for deposition.

Judicial estoppels do not apply in my case. I have filed chapter-7 pre-petition. Also I have mentioned unlimited damage in my first law suit. In the second case I also mentioned how much I am asking for damages to the court.

Res judicata does not apply in my case. There are deferent between AGE and Nation Origin. Age never been litigate before the court. Court has never amended any of these requests. So I should be able to litigate AGE and retaliation.

Plaintiff suffered severe hardship, mental degradation and homelessness as a direct result of defendant unlawful activity. Plaintiff have been under the care of a mental health professional while living in Washington state, and is currently seeking mental health wellness in the District of Columbia.

All of the above mentioned are retaliations for earlier protected activity. Fred Meyer, Inc. is violation of fair Labor Standers Act of 1938, 29 USC Sec. 206(d). Company is violation of 1st. 5th. 6th. 14th. Amendments.

The Acts of company and their attorney standers and behavior seriously constitute negligence, intentional infliction of emotional distress, and violation of Title VII of The Title VII of the 1964 and 1991 Civil Rights Acts.

Company never give full time job. But Company give hundreds of other employees

Younger workers right in front of me. I have proofs to prove it.

CLOSED, JURYDEMAND

U.S. District Court
WESTERN DISTRICT OF WASHINGTON (Seattle)
CIVIL DOCKET FOR CASE #: 2:05-cv-00385-JCC

Lama v Fred Meyer Inc
Assigned to: John C Coughenour
Demand:
Cause: 42-2000e Job Discrimination (Employment)

Date Filed: 03/09/2005
Jury Demand: Plaintiff
Nature of Suit: 442 Civil Rights: Jobs
Jurisdiction: Federal Question

Plaintiff

George Ram Lama

represented by
George Ram Lama
5029 18TH AVE NE
SEATTLE, WA 98105
206-522-0705
PRO SE

V.

Defendant

Fred Meyer Inc

represented by
James Ralph Dickens
MILLER NASH LLP
601 UNION ST
4400 TWO UNION SQUARE
SEATTLE, WA 98101-2352
206-622-8484
Fax: (206) 622-7485
Email:
jim.dickens@millernash.com
LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Rachel J Drake
MILLER NASH LLP
601 UNION ST
4400 TWO UNION SQUARE
SEATTLE, WA 98101-2352
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rachel.drake@millernash.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
03/09/2005	1	EMPLOYMENT DISCRIMINATION COMPLAINT and JURY DEMAND against defendant Fred Meyer (Summons(es)NOT issued) (Receipt # 410868), filed by George Ram Lama. (Attachments: # 1 Civil Cover Sheet)(PM,) (Entered: 03/14/2005)
03/09/2005	2	MOTION FOR COURT-APPOINTED COUNSEL by Plaintiff George Ram Lama. Noting Date 3/25/2005. (PM,) (Entered: 03/14/2005)
03/30/2005	3	NOTICE of Appearance by attorney James Ralph Dickens on behalf of Defendant Fred Meyer Inc (Dickens, James) (Entered: 03/30/2005)
04/05/2005	4	MINUTE ENTRY setting status conference: The attorney who will be responsible for trying the case should attend the conference and be prepared to discuss

		the following matters at the conference: **1.** The nature of the case, **2.** The status of matters which are presently set before the Court, e.g., hearings, motions, etc., **3.** The status of discovery and a time schedule for its completion, **4.** A statement of any legal issues about which motions are contemplated and a possible briefing schedule. **5.** An estimate of the number of days needed for trial, **6.** Whether the case is jury or non-jury, **7.** The date by which the case will be ready for trial, and **8.** Settlement probabilities. Counsel for all parties are required to appear at the conference. If counsel office is outside of Seattle, arrangements can be made for telephonic participation in the conference. If counsel wish to make such arrangements, they should contact Julie Mahnke, Deputy Clerk at 206-370-8805/ COUNSEL FOR THE PLAINTIFF IS DIRECTED TO NOTIFY ALL PARTIES OF THE DATE AND TIME OF THE SCHEDULED CONFERENCE. Status Conference set for 6/7/2005 09:00 AM before John C Coughenour. (JM.) (Entered: 04/05/2005)
04/05/2005	5	ORDER REGARDING DISCOVERY AND DEPOSITIONS by Judge John C Coughenour. (JM,) (Entered: 04/05/2005)
04/07/2005	6	ORDER denying 2 Plaintiff's Motion for Appointment of Counsel. Signed by Magistrate Judge James P. Donohue.(BHF) (Entered: 04/07/2005)

05/25/2005	7	ANSWER to Complaint *and Affirmative Defenses* by Fred Meyer Inc. (Dickens, James) (Entered: 05/25/2005)
05/26/2005	8	INITIAL DISCLOSURES by Plaintiff George Ram Lama. (Attachments: = 1 Part 1 # 2 Part 2# 3 Part 3# 4 Part 4# 5 Part 5)(LMS,) (Entered: 05/27/2005)
06/03/2005	9	JOINT STATUS REPORT filed by all parties. Est. Trial Days: 5. (Dickens, James) (Entered: 06/03/2005)
06/07/2005	10	MINUTES OF STATUS CONFERENCE: JCC; Dep Clerk: JM; CR: Zielie; Counsel: Lama/Drake; Called, counsel advises the Court of status. Court directs counsel to be guided by Local Civil Rule 16 in completing discovery and filing dispositive motions. Note that all depositions, discovery and perpetuation, must be completed before the discovery completion date. Jury instructions, if any, are to be filed with the Clerk and shall include an original version and two copies thereof, each numbered sequentially and with citations, and one copy on plain white paper without numbering or citations. Counsel are advised that the Court will rely primarily upon preparations of final instructions for submission to the jury. Counsel are advised that this case is one of several cases set for the week described below. **Counsel must be prepared to commence trial as**

		scheduled, but it must be understood that the trial may have to be continued. The Clerk should be contacted as the trial date approaches for further information regarding the calendar. Pretrial and trial schedule are set as follows: Jury Trial is set for 7/10/2006 09:30 AM before John C Coughenour. Pretrial Order due by 6/30/2006. Pleading amendment/3rd pty action due by 10/7/2005; 39.1 mediation to be completed by 5/12/2006; Trial briefs to be submitted by 7/6/2006/ Proposed voir dire jury instructions due by 7/6/2006; (JM,) (Entered: 06/07/2005)
06/07/2005	11	JOINT STATUS REPORT filed by all parties. Est. Trial Days: 5. (Dickens, James) (Entered: 06/07/2005)
07/21/2005	12	NOTICE of Unavailability of counsel James Ralph Dickens for Defendant Fred Meyer Inc from 7/25/2005 to 10/2/05 (Dickens, James) (Entered 07/21/2005)
10/04/2005	13	NOTICE of Change of Address by pltf and request for subpoenas. (Blank subpoenas mailed to pltf.)(CL,) (Entered: 10/04/2005)
10/14/2005	14	MOTION for Summary Judgment by Defendant Fred Meyer Inc. Noting Date 11/18/2005. (Attachments: # 1 proposed order)(Drake, Rachel) Modified on 10/17/2005 (CL,). (Entered: 10/14/2005)
10/14/2005	15	DECLARATION of James R. Dickens filed by Defendant Fred Meyer Inc re 14 MOTION for Summary Judgment

		(Attachments: # 1 Exhibit Nos. 1-5 to Decl. of James R. Dickens# 2 Exhibit Nos. 6-9 to Decl. of James R. Dickens# 3 Exhibit Nos. 10 to 11 to Decl. of James R. Dickens) (Drake, Rachel) (Entered: 10/14/2005)
10/14/2005	16	MOTION for Extension of Time *to Answer Discovery Pending Defendant's Motion for Summary Judgment* by Defendant Fred Meyer Inc. Noting Date 10/28/2005.(Attachments: # 1 Proposed Order Granting Defendant's Motion to Extend Discovery Deadlines)(Drake, Rachel) (Entered: 10/14/2005)
10/14/2005	17	DECLARATION of James R. Dickens in Support of Motion to Extend Deadlines filed by Defendant Fred Meyer Inc re 16 MOTION for Extension of Time *to Answer Discovery Pending Defendant's Motion for Summary Judgment* (Drake, Rachel) (Entered: 10/14/2005)
10/27/2005	18	REPLY, filed by Defendant Fred Meyer Inc, TO RESPONSE to 16 MOTION for Extension of Time *to Answer Discovery Pending Defendant's Motion for Summary Judgment* (Drake, Rachel) (Entered: 10/27/2005)
10/31/2005	19	ORDER re 16 MOTION for Extension of Time *to Answer Discovery Pending Defendant's Motion for Summary Judgment* filed by Fred Meyer Inc is GRANTED. Motions terminated: 16 MOTION for Extension of Time *to Answer Discovery Pending Defendant's Motion for Summary Judgment* filed by Fred Meyer Inc. by Judge John C

		Coughenour. (GO) (Entered: 10/31/2005)
11/10/2005	20	RESPONSE/Objection by Plaintiff George Ram Lama to 16MOTION for Extension of Time to Answer Discovery Pending Defendant's Motion for Summary Judgment by Defendant Fred Meyer Inc..(CL,) (Entered: 11/14/2005)
11/10/2005	21	RESPONSE/OBJECTION, by Plaintiff George Ram Lama, to 16 MOTION for extension of Time *to Answer Discovery Pending Defendant's Motion for Summary Judgment*, 14 MOTION for Summary Judgment. (CL,) (Entered: 11/14/2005)
11/10/2005	22	OBJECTIONS to 17 Declaration by Plaintiff George Ram Lama re 16 MOTION for Extension of time to Answer Discovery Pending Defendant's Motion for Summary Judgment. (CL,) Modified on 11/17/2005: added link to initiation motion (HBR,). (Entered: 11/14/2005)
11/10/2005	23	RESPONSE, by Plaintiff George Ram Lama, to 14 MOTION for Summary Judgment. Oral Argument Requested. (Attachments: # 1 Exhibits 1-25, #(2) Exhibits 26-56)(CL,) (Entered: 11/14/2005)
11/10/2005	24	OBJECTIONS to 15 Declaration, by Plaintiff George Ram Lama. (CL,) (Entered: 11/14/2005)
11/14/2005	25	NOTICE of payment to Dft Fred Meyer and their attys filed by Plaintiff George Ram Lama (CL,) (Entered: 11/15/2005)
11/17/2005	26	NOTICE:re payment to Fred Meyer by

		Plaintiff George Ram Lama (CL,) (Entered: 11/18/2005)
11/18/2005	27	**Incomplete image; to be refiled** REPLY, filed by Defendant Fred Meyer Inc, TO RESPONSE to 14 MOTION for Summary Judgment (Dickens, James) Modified on 11/18/2005 (DM,). (Entered: 11/18/2005)
11/18/2005	28	REPLY, filed by Defendant Fred Meyer Inc, TO RESPONSE to 14 MOTION for Summary Judgment (Dickens, James) (Entered: 11/18/2005)
11/25/2005	29	OBJECTIONS to 28 Reply to Response to Motion by Plaintiff George Ram Lama. (Attachments: # 1 exhibits 1-3)(CL,) (Entered: 11/28/2005)
12/21/2005	30	ORDER TO SHOW CAUSE re 14 MOTION for Summary Judgment filed by Fred Meyer Inc. 14 Motion for Summary Judgment is RENOTED to 2/3/2006. Pl.'s Show Cause Response due by 1/12/2006 on the issue of res judicata; Def.'s Opp'n thereto due by 1/30/2006; Pl.'s Reply due by 2/3/2006; Noting date will be 2/3/2006. By Judge John C Coughenour. (GO) (Entered: 12/21/2005)
01/12/2006	31	RESPONSE TO ORDER TO SHOW CAUSE by Plaintiff George Ram Lama. (Attachments: # 1 Exhibits)(CL,) (Entered: 01/13/2006)
01/30/2006	32	RESPONSE, by Defendant Fred Meyer Inc, to Show Cause Response Due NOTED on motion calendar; (Dickens, James) (Entered: 01/30/2006)
01/30/2006	33	Second DECLARATION of James R. Dickens filed by Defendant Fred Meyer

		Inc re Show Cause Response Due NOTED on motion calendar; (Dickens, James) (Entered: 01/30/2006)
02/03/02006	34	RESPONSE TO ORDER TO SHOW CAUSE by Plaintiff George Ram Lama. (CL,) (Entered: 02/06/2006)

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

GEORGE RAM LAMA

Plaintiff,

v.

FRED MEYER INC.

Defendant,

Civil No. CV05-0385

PLAINTIFF SHOW CAUSE BY COURT ORDERED. PLAINTIFF REQUEST TO OBJECT DKT#14 AND PROPOSED ORDER.

I, George Ram Lama, request the Court and Judge to object to the defendant's motion to summary judgment. (DKT#14 proposed order). These are the facts with which I base my objection.

1. This case was filed post-petition bankruptcy chapter-7. My bankruptcy attorney filed paperwork in the morning on the March 9, 2004. I filed my Civil Right case of Retaliation, Age discrimination, National Origin discrimination the same day in the afternoon. This is call post-petition.

Washington Court have applied this doctrine only to claims that arise prior to a petition in bankruptcy.

Claims that arise during and after the bankruptcy petition is filed do not have to be disclosed and are not barred by Judicial estoppel. For example, a plaintiff who chipped his tooth after biting into a sandwich in a defendant's restaurant during the pendency of this bankruptcy proceeding but prior to

discharge was allowed to maintain a personal injury action post-discharge.

Johnson v. Si-cor Inc. 1-7 wn. App. 902 (2001).

1. Old Case: In the old case, primary complaint focused on discrimination based on National Origin.

2. I requested permission to amend to include my claims of Retaliation, Promotion were rejected because Fred Meyer and their attorney and the judge said that I failed to complain to include Retaliation and Promotion in my EEOC claim. It was not the EEOC where I made the complaint, it was WHRC. The defendant kept saying it was EEOC. The EEOC never investigated my first case.

3. The WHRC had three meeting with Fred Meyer and their attorney in March and April of 2002. They never showed up to all the meetings. WHRC fired the intake officer and the investigator on the third meeting. In effect, the only one who knew the details of my case were gone. Due to the lack of investigation and participation in mediation, as well as profoundly incomplete request for Admission, Production, and Interrogatories from the defendant. All of the above attributed to a crippling of my case.

4. A retaliation claim can be included in a discrimination lawsuit, even if they were not previously made to WHRC/EEOC. Clokedile v. New Hampshire Dept. of Corr; 245 F.3d I, (st Cirs; 2001). DKT#22, p-52, 53, 54, 56 Therefore, I request the judge to favor my second EEOC complaint and lawsuit against the defendant. Because the retaliation never stopped, I got sick and was under a doctor's care. The defendant retaliated by refusing to approve my unemployment benefits after I left the company on July 5, 2004.

NEW CASE

My new case is George Lama v. Fred Meyer. It is a Civil Rights case (CV05-0305). This time I went to the EEOC not the WHRC. I went to the EEOC and complained I was being subject to further retaliation, Age Discrimination and National Origin.

I allege that in retaliation for my earlier protected activity and because of my age, I have been denied the following positions and promotion. GCR manager, Café clerk and food clerk on October 2003. DKT# 8, (EX-14-p1 to 8) DKT# 22, 29, p-

I was suspended for three days because the person with whom I traded a shift did not show up for work. For this day off, I wrote two letters, an email and talked to management every day until the day before I had in fact requested off on August 22, 2003. DKT#22 p. 1-6, DKT#29 p. 1-6. DKT#22, p-25, 26, 27. DKT#29, p-1. DKT#8, EX-32, (p-1-3)

1. NEW: DEMOTION

The Company managers demoted me by moving me outside the garden without prior notice, as a water boy. Outside the garden, the company had shade, water, sunglasses and gave breaks in time. When I was demoted to the outside garden the managers told me that I could not have any of these things.

Other employees were not treated this way. The Company managers made me suffer under the hot sun in 80-90 degree heat and hotter, eight hours a day.
DKT#8, EX-014 (p-1, 2) DKT#29 (p-7, 8, 9, 10) DKT#27 (p-7, 8, 9, 10)

I was not hired to the garden water boy position previously, but they kept me there for almost two years.

Management suspended me without good cause. This suspension was a form of retaliation.

I was suspended for three days on August 24, 2003. I lost three days' pay and two days' vacation pay. Therefore, I could not pay bills. Everything was falling behind. For an entire month, I asked for time off to see a doctor. I wrote two letters, an email and verbally requested directly to management every day. Finally, I found a replacement on my own. This replacement did not show up. Her name is Josie. The same day I had been requesting off for over a month, four other employees were schedule off. The Company and their attorney mentions that other employees had been suspended. The difference with these suspended employees was that they called out or were late on the same day. I notified management of my need for the day off more than thirty days in advance. The suspended employees were Edward Bryan,Ivoanna. DKT#22 p.25, 26, 26, 39, 40.

The Company refused and denied my unemployment benefits because of my ongoing lawsuit and my complaint to the EEOC.

When I was unable to work with good cause I applied for unemployment benefits on March 2004 and was approved with good cause. However, Fred Meyer and their attorney denied my benefits on July 2004. I went for a hearing and won the case and their attorney denied my benefits again. As a result, I lost my job benefits, my truck, my apartment, my good credit and had to rely on charities to pay my rent. I felt I was treated without decency. This is a part of retaliation. DKT#22 p. 11, 18, 19, 20. Jason, the

manager and the director, Cindy, lied under oath about me and what they witnessed. This testimony was used to deny my unemployment benefits. Neither Jason nor Cindy were working at the store while I was scheduled. The taped of this is available at the office of Administrative Hearing, DKT#

I never got a full-time job. I worked with Fred Meyer more than three years. This is also a part of Retaliation because I went to WRMS, EEOC and the District Court, DKT#22 p.9, 10.

I am a protected class in Nepal and I am a protected class in the U.S.A. I am a Taming Lama and my surname is Ghissing. Because I was refused and denied my job applications and refused for interview this is retaliation because I went to the EEOC and filed a lawsuit at the District Court.

I applied for jobs at five different Fred Meyer stores in King County: Bellevue, Issaquah, Redmond, Ballard and Shoreline. Out of thirty applications, I was granted only three interviews by Director Chris Wales, and the CCK front manager in Issaquah before the grand opening of their new store. I was never offered a job during or after my three interviews. In Bellevue, I talked to the Director Brian Skeer, Karma, Heidi, Mike, Terry, Susan, Paul, Marty and many more. In Redmond, I talked to Susan Brown, Philip Spence, Jill Morris. In Ballard, I talked to Debbie in Human Resources, Mark Barron, a food manager. In Shoreline, I talked to Julie in the food department and Robert Gibson. DKT#22 p. 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, DKT#8, EX-016 to 0229 (p-all). The last job I applied for was in the food department in Bellevue on October 22 and 24, 2004. DKT#8, EX-22, (p-1-4)

They refused to give me a full-time job refused to give me a better job and better pay. I thousands of other employees given better jobs and better pay above me. I have come to believe that Fred Meyer and their attorney's refusal for information of Admission, Production, and Interrogatories is directly related to these other promotions. The Company refused to train me for a better job and better pay.

The Company trained and promoted thousands of other employees who were younger and less experienced than myself and who got better jobs and better pay. The company refused to give me time off for jury duty and to see a doctor.

AGE DISCRIMINATION

On Fred Meyer and their attorney's watch, the Company managers racially profiled, harassed, intimidated, retaliated and created a hostile working environment.

Company and management intentionally scrutinized, treated me like a criminal. Management suspended me without good cause. Management's continue retaliation consisted of denying and refusing my applications, job interviews, giving time off to see the doctor, denying my benefits.

The Company never trained and promoted me for a better job and better pay. These are all actions of retaliation and age discrimination.

The Company demoted me by putting me outside in the garden as a water boy. The Company never gave me a full-time job.

DKT#8, EX-014 to 0034 (p-all) DKT#22 (p-1-51) DKT#29, (p-1-16)

AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967, AS AMENDED

Protects applicants and employees 40 years or older from discrimination on a basis age in hiring, promotion, discharge, compensation, terms, conditions or privileges of employment.

Prohibits discrimination in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and aspects of employment, on the basis of race color, religion, sex or National Origin.

The Company used and abused me, and took away my freedom and liberty.

MY CIVIL RIGHTS CASE: RETALIATION, AGE, NATIONAL ORIGIN, DISCRIMINATION

1. Retaliation against a person who files a charge of discrimination, participates in an investigation, or opposes an unlawful employment practice is prohibited by all of the Federal Laws. DKT#22, p-22. DKT#29, p-all. X-ref. Fair Labor standards Act of 1938. 29 u.s.c. sec. 206(b) DKT#22, p-13, 14, 15. DKT#8, EX-014 to -034 (p-all)

2. AGE DISCRIMINATION: The Age discrimination in Employment Act of 1967 (ADEA) protects Individuals who are 40 years of age or older from employment discrimination based on age. The ADEA's protections apply to both employees and job applicants. Under the ADEA, it is unlawful to discriminate against a person because of his/her age with respect to any terms, conditions, or privilege of employment, including, but not limited to, hiring, firing, promotion, layoff, compensation, benefits, job assignments, and training. It is also unlawful to retaliate against an individual for opposing

employment practices that discriminate based on age or for filing an age discrimination charge, testifying or participating in any way in an investigation, proceeding or litigation under the ADEA. DKT#

(Fred Meyer and their attorney have done both retaliation and discrimination.)

NATIONAL ORIGIN DISCRIMINATION

Title VII of the Civil Rights Act of 1964 protects individuals against employment discrimination on basis of National Origin, as well as race, color, religion, sex, and Retaliation for having asserted one's civil rights or participation in an EEOC proceeding or investigation.

It is unlawful to discriminate against any employee or applicant due to the individual's National Origin. No one can be denied equal employment opportunity because of the birthplace, ancestry, culture, or linguistic characteristics common to a specific ethnic group. Equal employment opportunity cannot be denied because of marriage or association with person of a national origin group, attendance or participation in school churches, temples or mosques generally associated with a national origin group; or a surname associated with a national origin group. DKT#8 EX-014 to EX-034, (p-all) DKT#22-23, (p-all) DKT#29, (p-all)

Harassment, intimidation, hostile or offensive working environment, which unreasonably interferes work performance, or negatively affects an individual's employment opportunities based on national origin is a violation of Title VII. DKT#8, EX-16 to 22 (p-all)

On Fred Meyer and their attorney's watch, I was profiled, scrutinized, denied applications and

interviews, never gave me a full-time job, demoted me to the garden outside on hot days, the Company denied my unemployment benefits, I got sick and depressed. DKT#22-23, p-11, 12 DKT#29, p-18.

On their watch, I lost everything. I filed bankruptcy. I lost my life savings. I lost my housing. I lost my transportation. I lost my good credit standing. They destroyed my life and potentially my future.

Due to continuous retaliation for more than three years, suspension and deterioration of worksite and unreasonable hardship on me under WAC 192-150-125, I got sick and declared bankruptcy in March 2004. I was under a doctor's care. All of this happened due to hardship imposed on me by Fred Meyer and their attorney.

I just want to be compensated for my loss, suffering, and intentional negligence on the part of Fred Meyer and their attorney. I want my life back to normal and want to put this in the past where it belongs.

All retaliations and discriminations please check DKT#8 EX-014 to EX-034, DKT#29, P-1-to-16, DKT#22-23, p-1-to-51.

(Last 1 to 4 pages are evidence, page 5 is a request).

January 12, 2006

George Ram Lama
5029 18th Ave. NE
Seattle, WA 98105
206-522-0705

AGE discrimination: Federal law prevent from discriminating against job applications and employment on the basis of AGE. The best known example of the laws, the federal Age discrimination in employment Act (ADEA), prohibits employers from discriminating against employees and applications who knew 40 years of age and older based on their Age. The ADEA is very clear on its prohibitions, some of which are summarized here for quick reference. Retaliation, unlawful employment practice, promotion, promotion, refused job applications, hiring, firing, layoff. job training, job assignments and benefits. These are all unlawful to discriminate any employees under AREA and Federal law. Also workers who takes action under ADEA con not be discriminated against for filing, testify at, participating in claim an employer.

Company and their Attorney opposed all of the above on me and refused every thing I requested for new jobs, transfer, promotions, better pay and better job. They are violation of all the laws of AGE discrimination. This went on more than three years.

Company is violation of Fair Labor Standers Act of 1938, 29 USC Sec. 206(b)

Age discrimination ADEA, Civil right Act of 1967 and 1991 and WRC 49. 60. 030.

Within three half years, Company hired thousands younger employees and gave better job and better pay. I have the proofs to prove the court.

Retaliation agenized a person who files a charge of discrimination, participates in an investigation, or opposes an unlawful employment practice is prohibited by all of the federal Law. Fair Labor Law Act of 1938. 29. USC. Sec.206(b).

All of the above are retaliations against me for more than three years.

Separation was a necessary violence as defined by RCW 26. 50. 010.

Deterioration of work and unreasonable hardship under WAC 192-150-125

They are violations of the 1st, 5th, 6th and 14th amendments.

Please check this case: Date 1/4/2006, Doyle Baker v. Private-Air.

Superior Court, Los Angeles County, California. Mr. Baker sued Private-Air on AGE discrimination. Date 12/21/2001. Case: Marjati Winarto v. Toshiba. Case number 99-55448.

Court: United State Court of Appeals for the Ninth Circuit

Date. 6/16/1999. Case: Virginia M Marques v. Bank of America. Case Number 96-CV-1932.

Court: United District for the Northern district of California.

WHRC INTAKE REPORT
148th Avenue NE
Bellevue, WA 98107

I, George Lama, charge the above named Respondent with unfair practice and/or aiding and abetting in the commission of an unfair practice as defined by the Washington State Law Against Discrimination, Chapter 49.60. This complaint arises from decimation in employment on the basis of national origin.

The following is a summary of my complaint:

Respondent hired me in August 2000 as clerk. I am Nepali of Asian origin.
Since around January 2001, Respondent's management continually watches and scrutinizes me to determine if I have stolen anything at work. To the best of my knowledge, I satisfactorily perform my job.
On December 24, 2001, management approached me to see if I had paid for my purchase. Respondent does not treat similarly non-Asian co-workers in this manner. I believe the Respondent discriminated against me due to my national origin.

George R. Lama
SUBSCRIBED AND SWORN TO, BEFORE ME,
THIS 24TH OF 2002

James D. Brown
Notary Public, State of Washington
Commission expires May 19, 2002
Day of March 2002 Notary Public in and for the
State of Washington Residing at King County
I also allege violation of Title VII of the Civil Rights Act of 1984 and request that this complaint be filed with the U.S. Equal Employment Opportunity Commission.

Case number 17EN-0855-C12 38GA 200398

(WHRC fired the intake officer. No investigation was done.)

Washington State Human Rights Commission
EEOC 380-2004-01014

George R. Lama
(206)322-9773
Broadway #309, Seattle WA 98122

FRED MEYER
(425)865-8560
148th N.E., Bellevue, WA 98007

Retaliation Age National Origin 6-01-2003
10-24-2003d

led a complaint of discrimination based on national origin with the Washington State Human Rights Commission in April 2002. I filed a lawsuit against Fred Meyer alleging discrimination in January 2003. I am from Nepalese, and I am 55 years old.

Company that in retaliation for my earlier protected activity and because of my age, I have been denied the following promotions: garden department manager (June/July 2003), Food Clerk and Grocery Clerk (Oct 22,2003) and deli cafe clerk & cashier (Oct 24, 2003).

In Sept 22, 2003, I was suspended for three days because the person with whom I traded a shift did not show up for work. I believe that employees are not typically suspended for this, and that my employer is looking for ways to terminate me because of my age, my national origin, and in retaliation for having engaged in protected activity, in violation of the Age Discrimination in Employment Act of 1967,

as amended, and Title VII of the Civil rights Act of 1964, as amended.

Jan 22, 2004 George Lama
subscribed and sworn to before me this date
Kari Thompson Jan 22, 2004
Investigator rec'd 9:10 am

Notice of Suit Rights

Kari Thompson
Investigator

Title VII, the Americans with Disabilities Act, and/or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit must be filed WITHIN 90 DAYS of your receipt of this NOTICE; or your right to sue based on this charge will be lost. (This time limit for filing suit based on a state claim may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that back pay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.

On behalf of the
Commission

Jan - 6, 2005
Date Mailed

Jeanette M. Leino
District Director

cc: FRED MEYER
C/O James R. Dickens
Attorney At Law
Seattle, WA 98101-1367

Seattle District Office
909 First Avenue
Suite 400
Seattle, WA 98104

EEOC AGE DISCRIMINATION Recent Federal case Citation List:

Tellez v. Department of the Army, EEOC Appeal No. 05A41133 (3/18/05) commission found direct evidence of Age discrimination.

Retaliation: What constitutes protected activity?

Abordo, et al, and the Estate of James Yell v. USPS. EEOC Appeal No. 07A20066 (11/6/03.
Anthony v. Department of the Interior, EEOC Appeal No. 01A20111(3/1004) disparate treatment found.

Pre- employment Inquiries:

Kelly v. Department of Commerce, EEOC Appeal No. 01A30554 (5/11/04)
Adair v. Department of Veterans Affairs, EEOC Appeal No. 01A24528(1/7/04)
Edwards v. Department of Veterans Affairs, EEOC, Appeal No. 01A30010 (2/11/04)

WASHINGTON STATE HUMAN RIGHT COMMISSION
COMPLAINT.

Complaint: George Ram Lama
Respondent: Fred Meyer, INC.

WHRC INTAKE REPORT
Bellevue, WA. 98107

I George Lama charge the above named Respondent with unfair practice and /or aiding and abetting in the commission of an unfair practice as defined by the Washington State Law Against Discrimination, Chapter 49.60. This complaint Aries from decimation in employment on the basis of national origin.

The following is a summary of my complaint:

Respondent hired me in August 2000, as Clark. I am Nepali of Asian origin.
Since around January 2001. Respondent's management continually watches and scrutinizes me to determine if I have stolen anything at work. To the best my knowledge, I satisfactorily perform my job.
On December 24, 2001, management approached me to see if I had paid for my purchase. Respondent does not treat similarly non Asian co-workers in this manner. I believe the respondent discriminated against me due to my national origin.

George R. Lama
SUBSCRIBED AND SWORN TO, BEFORE ME,
THE 24TH OF 2002

James D. Brown
Notary Public State of Washington Commission expires May 19, 200
Day of March 2002 Notary Public in and for the state of Washington Residing at King county

I also allege violation of Title VII of the Civil Right Act of 1984 and request that this complaint be filed with the U.S. Equal employment Opportunity Commission

Case number 17EN-0855-C12 38GA 200398 (WHRC FIRED THE INTAKE OFFICER. NO INVESTAGATIONS WAS DONE).

Retaliation

I have requested permission to amend my Complaint to include a claim for Retaliation for retaliatory actions that Fred Meyer has been taking against me after I have filed my claim with EEOC and after I have filed this lawsuit and to request an injunction to prohibit further retaliation.

The EEOC and WSHRC did not rule on this retaliation because it is going on now – it is still going on. In fact, I have recently been subjected to three-day suspension for something that was not my fault and I have been issued a reprimand for not doing some specific jobs while my supervisor, who issued the reprimand, was piling other work on me. The copies that I was given of these Notices from Fred Meyer were illegible, until just a couple of days ago, when I finally was given a legible copy. I have just been demoted to the garden without further notice. I believe this is in retaliation for my filing a discrimination complaint, and I should be allowed to amend my complaint to state this retaliation.

Retaliation claims can be included in a discrimination lawsuit, even if they were not previously made to the EEOC. The court never amended retaliation, so I went to the EEOC.

George Ram Lama, pro se
510 Broadway
Seattle, WA 98122

I present all these issues to the District Court and Appeal Court. Judicial Estoppels do not apply in my case. *Johnson v. Si-cor Inc.* 107 wn. App. 902 (2001)

Res Judicata does not apply in my case. Age and National Origin are very different words and meaning. Both cases Company and their Attorney never gave me information that I needed to litigate fairly and fully in the Court system. Then Defendant rushed to judgment. They know how to trek of the tread.

The Court and Defendant's attorney never gave me a fair opportunity to litigate fairly and fully.

The rule that successors in interest have privity for purposes of *Res judicata* is not applicable where the previous action involved a National Original right as opposed to an age discrimination right. *South center joint venture v. Nat'l Democratic policy comm.* 133 Wn.2d.413, 418, 780 P.2d 1282 (1989)

Judgment was not on good faith and I did not have fair and full litigation because attorney withheld all the information I needed.

Proposes of *Res judicata* denotes only privity as it exists in relation to the subject matter of the litigation. *Owens v. Kuro*, 56 Wn.2d 564, 568, 354 P.2d 696 (1958). Company and their Attorney and lower Courts never gave fair and full litigations in both cases.

EEOC - LAW

Charge No.: 38GA200390

Request to the U.S. District Court should be made well before the end of the period mentioned above. A request for representation does not relieve the Charging Party of the obligation to file a lawsuit within this 90-day period.

The parties are reminded that federal law prohibits Retaliation against individuals who have exercised their right to protest acts they believe violate the laws enforced by the Commission. Retaliation against individuals who have participated in the processing of charges or complaints by the Commission is also prohibited. These protections extend to the individuals regardless of the Commission's determination concerning the merits of the charge.

On Behalf of the Commission:

12-12-02
Date

Jeannette M. Leino
Jeannette M. Leino

Ref: Applications for Job from 2001 to 2003

1) 11/19/02
   Mr. Mark Narron Ballard Food/ MGR
   CC: Debbie Barnes HRA
   Ballard, WA
   Tel (206) 297-4300
   Witnesses: Paul Ring, Gillian Boyes, Marty Plays
2) 11/05/02
   Home Manger M.B.
   Bellevue, WA
   Witnesses: Liliya Semeyuk, Chris Busse, Iovona Perkanson
3) 9/02 & 9/20003
   Dept. Manager
   Redmond, WA
   Witnesses: Susan Brown, Philip Spencer, Jill Morris
4) 7/15/01 & 7/18/02
   CCK Tamra and Terry
   Department Mangers
   FM Issaquah, WA
   Witnesses: Chris Wales, Susan Brown, Marty Plays
5) 8/12/02
   Home Manager Mike Brecky
   Bellevue, WA 98007
   Witnesses: Paul Eng, Chrish Busse, Shawn Truman
6) 01/15/03
   Dir. Cindy Smith & Tamara
   Bellevue, WA .
   Witness: Marty Plays, Chris Busse, Iovona Perkanson,
   Refused to give me interview in jobs.

Justices rule for over 40 – workers

Deliberate bias not a condition

By Joan Biskupic
USA TODAY

WASHINGTON – Older workers can sue over pay or benefit plans that favor younger employees, even if no evidence of deliberate age discrimination exists, the Supreme Court rule Wednesday in a decision that could have a major effect on the nation's workforce.

By a 5-3 vote, the court ruled that in addition to covering intentional bias, the Age Discrimination in Employment Act covers workplace practices that appear Neutral but disproportionately affect workers over age 40.

Justice John Paul Stevens wrote in the leading opinion that when Congress wrote the law, it was concerned with the "effects" an employer's action had on a worker in addition to the employer's motivation. At the same time, however, the court limited an employer's motivation. At the same time, however, the court limited an employer's liability for such "disparate impact" claims. The court said employers could defend their practices based on "reasonable factors" beyond age.

Last year, 72.8 million workers were over age 40, according to the Bureau of Labor Statistics.

Business Lawyers and human – resource specialists were divided over whether employers would be flooded with new lawsuits. They agreed, however, that companies would have to more

seriously review the possible statistical consequences of their policies

To defend themselves, Bokat said, companies might have to have statisticians look at how their policies would affect older workers and have an "iron – clad reason "for making them.

Wednesday's ruling came in a case brought by 30 middle – aged police officers and dispatcher's in Jackson, Miss. Siding with the city of Jackson were several government and private business groups, including the Chamber of Commerce of the United States and the National League of Cities.

On the other side, lawyers representing older workers said the decision would help Ferret out more subtle and more common methods of bias. They said that there often is no easy proof of discriminatory intent.

AARP lawyer Laurie McCann said, "You don't often have a smoking gun. This is a huge shot in the arm for age – discrimination plaintiffs."

The AARP, the nation's biggest lobbying group for the elderly, joined with the American Association of University Professors and a dozen other groups in urging the high court to allow workers to pursue claims.

The ruling puts a new category of age claims on the same footing as those filed under Title VII of the Civil Rights Act of 1964, which protects against race and sex discrimination. The high court earlier ruled that Title VII covered not only discrimination but practices that appeared fair, but had the effect of being discriminatory.

But because, as Stevens wrote, the law against age discrimination does not sweep as broadly as Title VII, the liability in age cases is limited. The court

said employees must identify specific practices that cause the statistical disparities. If an employer shows that the practices were based on reasonable factors other than age, the employees lose their case.

In the Jackson case, the court rejected a challenge to a performance – pay policy by the city that boosted salaries and ended up favoring younger employees. The city argued that it needed higher pay for junior officers than for those in higher ranks, where there were more older workers, to make its salaries competitive.

Dissenting from the part allowing disparate impact lawsuits were Justices Sandra Day O'Connor, Anthony Kennedy and Clarence Thomas. Chief Justice William Rehnquist took no part in the case. "It is a very significant ruling because it is so hard to prove purposeful age discrimination," said Thomas Goldstein, who represented the older officers

Glen Nager, who represented Jackson city officials, emphasized that "reasonable employer practices are lawful under the statue.'

The anti-bias law "focuses on the effects of the action on the employee rather than the motivation for the action of the employer."

-Justice John Paul Steven

Court Expands Right to Sue Over Retaliation on the Job

By Charles Lane
Washington Post Staff Writer

The Supreme Court made it easier yesterday for workers in most parts of the country to sue employers for retaliating about sexual harassment or other discrimination. The court ruled that employees may collect damages, even in some cases where the punishment did not involve getting fired or losing wages.

The decision, which had the full support of eight justices, expands the legal rights of millions of workers who are covered by Title VII of the 1964 Civil Rights Act, the main federal law against job discrimination, and their employers. Justice Samuel A. Alito Jr. agreed with the result but differed from the majority reasoning.

By setting a single national rule to define what constitutes retaliation, the court brought a measure of clarity to an area of law that generates thousands of cases per year, but had produced conflicting interpretations of Title VII in the lower courts.

Now, many retaliation cases that had previously been dismissed because the facts were not in dispute are likely to go to trial. That will encourage lawyers for alleged victims to take on more cases, and, accordingly, raise companies' costs for lawyers and defensive management practices.

In the case decided yesterday, *Burlington Northern and Santa Fe Railway Co. V. White*, No. 05-259, forklift operator Sheila White had won $43,500 in damages and medical expenses from a federal jury, which found that her boss responded to her complaints about co-workers' sexual harassment

by transferring her to a more arduous job and suspending her for 37 days without pay.

She was later reinstated and awarded back bay, and Burlington Northern argued to the Supreme Court that this ending should have negated her retaliation suit.

The railroad said that the law re- (sic) with that view, though it believed that White should win her case, even under the company's interpretation.

But Justice Stephen G. Breyer wrote that, under the circumstances, the railroad's actions would have been enough to deter a reasonable employer from making a charge in the first place. This, he wrote, is the proper definition of illegal retaliation, and should set the standard for all future cases.

Without a robust anti-retaliation law, Breyer noted, the law's basic purposes could be undercut, since fewer victims might complain.

"Interpreting the anti-retaliation provision to provide broad protection from retaliation helps assure the cooperation upon which accomplishment of the Act's primary objective defends," Breyer wrote.

Breyer concluded that even some actions that take place outside the workplace can qualify as retaliation, if they are serious enough. As an example, he cited a previous case in which an employer had filed a false criminal charge against an employee who had complained about discrimination.

"Justice Breyer's standard opens the door to claims based on actions that before today companies would not have suspected were actionable," said Daniel P. Westman, a lawyer with the firm Morrison & Foerster who represents employers in job discrimination cases. "Companies will have to be

much more careful as to how they manage employees who are covered by Title VII."

The opinion also reflected a widely shared sense of the court that employment discrimination law has to be flexible enough to account for the realities of a diverse modern workplace, in which the same action by an employer could have different effects depending on the employee.

Citing a past case in which a mother of a disabled child had sued for retaliation because she was put on a shift that made it hard for her to spend days at home, Breyer wrote

Even refusing to invite a worker lunch can be retaliation, Breyer wrote, if it is "a weekly training lunch that contributes significantly to the employee's professional advancement."

"All people protected against job discrimination benefit from this decisions, whether it be sexual harassment, or discrimination in hiring, promotions, or pay, said Marcia Greenberger, co-president of the National Women's Law Center, which filed a friend of the court brief supporting White on behalf of more than 30 organizations. "If the Court has upheld the standard urged by the railroad and the administration, it would have created a hole in civil rights protections big enough to drive a forklift through."

Breyer's opinion was endorsed by a broad liberal-conservative majority of the court, with only Alito writing in a concurring opinion that he saw "practical problems" with the majority's approach. Like the Bush administration, Alito argued that retaliation claims should be limited to those involving the terms or conditions of employment –

but that White should win the case, even under that more restrictive legal standard.

In its ruling yesterday, the court adopted the relatively pro-plaintiff rule that had been previously outlined by the federal circuit courts of appeals based in Chicago and Washington, DC, and rejected the more restrictive standard that had prevailed in five other regions of the country.

Only in the Western states could yesterday's ruling limit retaliation suits, because the San Francisco-based appeals court had endorsed an even more pro-plaintiff standard than the Chicago and DC courts.

Unlawful retaliation lawsuits were already somewhat easier for employees to win than lawsuits claiming discrimination only.

As a result, retaliation claims under Title VII nearly doubled between 1992 and 2005.

Firing Not Crucial, High Court Decides

But ruling allows employer's defense

By David G. Savage
Los Angeles Times

WASHINGTON – Workers who quite because because of "intolerable" sexual harassment may sue their employers as though they had been fired, even if they did not formally complain about any abuse, the Supreme Court said yesterday.

However, employers may defend themselves against paying damages, the court said, if they can convince a jury that the worker unreasonably ignored the complaint procedure.

The decision clarifies the law on sexual harassment and makes it somewhat easier for alleged victims to bring their claims in court.

In particular, it clear the way for a jury to hear a sexual harassment suit brought by a woman who quite after working for a few months at a Pennsylvania State Police barracks.

Nancy Suders, who was hired in 1998 as a communications operator, said her three male supervisors subjected her to a "continuous barrage of sexual harassment." One, she said, talked to her repeatedly about sex with animals. A second sat on her desk and made gestures simulating oral sex. A third, she said, made obscene gestures as many as five or six times a night.

Suders said she spoke to an employee who was supposed to take workplace complaints, but was not offered any help.

After three months on the job, she quite. She later sued the state police.

A federal judge threw out her complaint because she had not formally gone to state police supervisors

about the alleged harassment. When she appealed the U.S. Court of Appeals of Philadelphia ruled that Suders had in effect been fired, and was therefore entitled to win damages from her employer.

The two lower-court rulings in her case illustrated the confusion about how to handle such complaints.

Ruling 8-1 yesterday, the Supreme Court gave something to both sides.

The court made it easier for employees who quit to win damages as though they had been fired or demoted for rebuffing a supervisor's sexual advances.

Justice Ruth Bader Ginsburg, writing for the majority said,

If the answer is yes, employees may take their cases before a jury and win damages as though they had been fired, the court said.

However, employers may try to prove to the jury that they did everything possible to prevent sexual harassment of their workers. They can seek to show they had an effective way for employees to report harassment and that the alleged victim failed to alert the company or the agency about the problem.

Justice Clarence Thomas was the lone dissenter. He said victims of sexual harassment should have to prove the agency itself was negligent in failing to stop the harassment.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

George Ram Lama,	)	
	)	
Plaintiff,	)	CASE NO. C03-0049 MJB
	)	
v.	)	ORDER GRANTING
	)	DEFENDANT'S MOTION
FRED MEYER,	)	FOR SUMMARY
	)	JUDGMENT
Defendant.	)	
	)	

This matter is before the undersigned Magistrate Judge by consent of the parties. On March 10, 2003, Plaintiff, who is proceeding *pro se*, filed an Amended Employment Discrimination Complaint pursuant to Title VII of the Civil Rights Act of 1964 against defendant Fred Meyer and several individual employees of Fred Meyer. (Dkt. #10). On April 7, 2003, this Court issued and order dismissing the individual employee defendants. (Dkt. #17). Thus, Plaintiff's action currently proceeds solely against defendant Fred Meyer. Plaintiff alleges that Defendant discriminated against him by failing to promote him and by subjecting him to profiling and harassment because of his race, color, religion, national origin and political interests.

Currently before the Court is Defendant's Motion for Summary Judgment seeking dismissal of all Plaintiff's claims. (Dkt. #30). Plaintiff has filed opposition to this motion on grounds of untimely service and he requests continuance of the summary

judgment hearing and more time to respond because he has not completed discovery. (Dkt. #36). Plaintiff also notes that he has requested permission to amend his complaint to include a claim of retaliation for actions Defendant allegedly took against him after his EEOC claim and this action were filed.

Summary judgment is appropriate if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P 56(c); *see also Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). The moving party has the burden of demonstrating the absence of genuine issues of material fact. *Anderson*, 477 U.S. at 257. The court is required to draw all inferences in a light most favorable to the non-moving party. *Id.* at 248. If the movant meets this burden, the summary judgment will be granted unless there is significant probative evidence tending to support the opponent's legal theory. *See First Nat'l Bank v. Cities Serv. Co.*, 391 U.S. 253, 290 (1968). For the reason set forth below, the Court grants the summary judgment motion and dismisses all Plaintiff's claims against Defendant.

A. Timeliness of Service

Plaintiff alleges that he was not timely served Defendant's summary judgment motion because the motion was delivered to him on Friday, October 31, only three Fridays before the noting date of November 21, 2003. Local Rule CR 7 provides that all dispositive motions shall be noted for consideration no earlier than the fourth Friday after filing and service of the motion.

Here, the certificate of service filed with the summary judgment motion indicates that the motion was mailed to Plaintiff's last known address on October 30, 2003. Likewise, Plaintiff acknowledges that the motion was both mailed to him on October 30, 2003 and delivered to him on October 31, 2003. (Dkt. #36, p. 3). Pursuant to Fed. R. Civ. P. 5(b)(2)(B), service by mail is complete upon mailing. Accordingly, this Court finds that Defendant's summary judgment motion was timely served when it was mailed on October 30, 2003, which was four Fridays before the noting date as required under CR 7.

B. Exhaustion of Administrative Remedies

Defendant moves this court to dismiss Plaintiff's failure to promote claim, arguing that it is barred in this Title VII action because it was not included in Plaintiff's discrimination charges filed with the Washington State Human Rights Commission (WSHRC) and the Equal Employment Opportunity Commission (EEOC). To establish federal subject matter jurisdiction, a plaintiff is required to exhaust administrative remedies before seeking adjudication of a Title VII claim. *Lyons v. England,* 307 F.3d 1092, 1103 (9th Cir. 2002); *B.K.B. v. Maui Police Dept.*, 276 F.3d 1091, 1099 (9th Cir. 2002). A plaintiff exhausts administrative remedies by filing a timely charge with the EEOC or the appropriate state agency, thereby affording the agency an opportunity to investigate the charge. *See* 42 U.S.C. § 2000e-5(b). Allegations of discrimination not included in the plaintiff's administrative charge "may not be considered by a federal court unless the new claims are 'like or reasonably related to the allegations contained in the EEOC charge.'" *Green v. Los*

Angeles County Superintendent of Schs., 883 F.2d 1472, 1475-76 (9th Cir. 1989) (quoting *Brown v. Puget Sound Elec. Apprenticeship & Training Trust*, 732 F.2d 726, 729 (9th Cir. 1984)). The court will consider a plaintiff's claims to be reasonably related to allegations in the charge "to the extent that those claims are consistent with the plaintiff's originaly theory of the case." *B.K.B.* 276 F3d at 1100.

In determining whether the exhaustion requirement has been satisfied, "it is appropriate to consider such factors as the alleged basis of the discrimination, dates of discriminatory acts specified within the charge, perpetrators of discrimination named in the charge, and any locations at which discrimination is alleged to have occurred. *Id.* The crucial element of a charge of discrimination is the factual statement contained therein." *Id.*

Here, in his complaint to the WSHRC and the EEOC, Plaintiff, who is Nepali of Asian origin, claimed discrimination due to his national origin. The factual allegations in Plaintiff's administrative charge refer only to discriminatory conduct in relation to being continually watched and scrutinized by Defendant's management to determine if he had stolen anything at work. (Dkt. #32, Ex. 2). He also alleged one specific incident where management approached him to see if he had paid for a purchase. Plaintiff contended that Defendant did not treat similarly situated non-Asian co-workers in this manner. *Id.* Nothing in these allegations would have indicated that an EEOC investigation should focus on alleged discrimination by Defendant in the context of failure to promote. Moreover, unlike his current amended complaint, Plaintiff's administrative charges clearly did not allege

discrimination on the basis of face, color, religion or political interests. Therefore, this Court finds that the Plaintiff's allegation of discriminatory failure to promote is neight like not related to his EEOC/WSHRC charges, which focused narrowly on national origin discrimination in the context of being closely watched, scrutinized and followed. Accordingly, Plaintiff's failure to exhaust administrative remedies on his failure to promote claim, as well as his claims of discrimination based on race, color, religion or political interests, deprives this Court of subject matter jurisdiction of those claims.

C. Harassment Claim[1]

Defendant moves this Court for summary judgment of dismissal of Plaintiff's harassment claim on grounds that he fails to allege facts necessary to sustain a disparate treatment claim and fails to establish a prima facie case of hostile work environment. The complainant in a Title VII action must present a prima facie case of harassment. *See McDonnel Douglass Copr. V. Green,,* 411 U.S. 792, 802, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973). Once the complainant has made a prima facie showing, the burden shifts back to the employer to articulate a legitimate nondiscriminatory reason for the employer's conduct. *Id.* If the employer supplies a

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[1] Plaintiff also refers to this claim as "profiling" in his amended complaint and in his response to this motion. He defines "profiling" as "they are concentrating on the one individual.. they have done following, profiling, or checking the bathroom or parking lot, you know, eight hours a day." (Dkt. #32, Ex. 8, p. 47).

legitimate reason, the employee must be given an opportunity to show that the employer's reason is merely a pretext for discrimination. *Id.* at 804.

To establish a prima facie case of disparate treatment, a plaintiff must show that (1) he belongs to a protected class; (2) he was qualified for the position; (3) he was subject to an adverse employment action; and (4) similarly situated individuals outside his protected class were treated more favorably. *Id.* at 802. To establish that he was subjected to a hostile work environment, plaintiff must raised triable issues of fact as to whether (1) he was subjected to verbal or physical conduct because of his [national origin], (2) the conduct was unwelcome, and (3) the conduct was sufficiently severe or pervasive to alter the conditions of employment and create an abusive working environment. *See Manatt v. Bank of America, NA* 339 F.3d 792, 798 9th Cir. 2003).

In opposing a motion for summary judgment, the nonmovant cannot simply rely on allegations or unsupported assertions. *See* Rule 56(e). Instead, the nonmovant must set out specific facts in declarations, depositions, answers to interrogatories, or authenticated documents, as provided in Rule 56(e), that contradict the facts shown in the moving party's declarations and documents and show that there is a genuine issue of material fact for trial. *See id.* If the nonmovant does not submit evidence in opposition, summary judgment, if appropriate, may be entered against the nonmovant. *Id.*

Here, although he alleges harassment as a result of being continually scrutinized and followed as if he were a thief, Plaintiff presents only his unsupported assertions as the basis for this claim. The record

contains no evidence to create a genuine issue of material fact that Defendant was investigating Plaintiff or scrutinizing him more closely than other employees. Indeed, the record contains the declaration of Defendant's Human Resources Regional Supervisor for the EW region, Heidi Malmstrom, who indicates that she had spoken to Plaintiff on numerous occasions and explained to him that "Fred Meyer is not investigating him, it has never investigated him, and he is not under any more scrutiny or review than any other employee." (Dkt. #31). Moreover, while Defendant does not dispute that Plaintiff was stopped on one occasion to determine if he had paid for a purchase, Defendant has produced evidence of a legitimate nondiscriminatory reason for this action based on a policy under which all employees are subject to inspection of any packages being taken out of the store. (Dkt. #31, Ex. 1). Plaintiff has provided no evidence tending to show that Defendant's reason was a pretext for the discriminatory action.

Likewise, Plaintiff admits in his deposition testimony that no one ever physically touched him and that no one ever made a derogatory comment to him about being Nepalese. (Dkt. #32, Ex. 8, pp. 47, 55-56). Additionally, the record contains no evidence, other than Plaintiff's unsupported allegations, that he was followed or closely monitored because of his national origin. Further, the Court agrees with Defendant that the screening of Plaintiff's purchase on one occasion out of the three years of his employment with Defendant does not constitute a sufficiently severe or pervasive condition that altered the conditions of Plaintiff's employment and created an abusive work environment.

Accordingly, this Court finds that Plaintiff has failed to establish a prima facie case based on either disparate treatment or a hostile work environment and thus, there is no genuine issue of material fact precluding summary judgment on these claims.

D. Retaliation

Plaintiff has also requested permission to amend his complaint to include a claim for retaliation. (Dkt #26). To make out a prima facie case of retaliation under Title VII, plaintiff must establish that: (1) he engaged in a protected activity, such as the filing of a complaint alleging discrimination, (2) defendant subjected him to an adverse employment action, and (3) a causal link exists between the protected activity and the adverse action. *Manatt*, 339 F.3d at 800.

Plaintiff alleges that he has been suspended and reprimanded, without cause, after filing the EEOC complaint and after filing this lawsuit. Specifically, Plaintiff contends that he was suspended for three days for something that was not his fault and that he was issued a reprimand for not doing some specific jobs. Plaintiff also contends that he has not been given the hours that he was promised and was not given Friday's off in spite of many timely requests. While these allegations satisfy the first two requirements for a prima facie case of retaliation, the record contains no evidence showing a causal link between the protected activity and the adverse action. Therefore the Court finds that Plaintiff has failed to establish a prima facie case of retaliation.

It is therefore ORDERED that:

(1) Defendant's motion for summary judgment of dismissal of all claims alleged by plaintiff George Ram Lama (Dkt #30) is GRANTED. This action is DISMISSED with prejudice.

(2) Plaintiff's Motion to Compel Discovery (Dkt. #26) is STRICKEN as moot;

(3) The Clerk is directed to send copies of this Order to all counsel of record and to the Honorable Monica J. Benton.

DATED this 8th day of January 2004.

s/ Monica J. Benton
MONICA J. BENTON
United States Magistrate Judge

2:03-cv-00049-MJB Lama v. Fred Meyer, et al
Monica J. Benton, presiding
Date filed: 01/10/2003
Date terminated: 01/09/2004
Date of last filing: 03/01/2004

History

Doc No.	Dates.	Description
1	*Filed:* 01/10/2003 *Entered:* 01/13/2003	Complaint:
	Docket Test: COMPLAINT: (NO Summons(es) issued) Receipt #406566 (PM)	
2	*Filed:* 01/10/2003 *Entered:* 01/15/2003 *Terminated:*03/18/2003	Motion to Appoint Counsel
	Docket Text: MOTION to plaintiff for appointment of counsel NOTED FOR 1/31/03 (PM)	
3	*Filed:* 01/13/2003 *Entered:* 01/16/2003	Praecipe
	Docket Text: PRAECIPE: by plaintiff re: issuance of summonses, iss'd (RS)	
4	*Filed:* 01/21/2003 *Entered:* 01/22/2003	Order
	Docket Text: ORDER by Judge Barbara J. Rothstein REFERRING to Magistrate Judge Monica J. Benton the motion for appointment of counsel [2-1] (cc: counsel, Judge) (RS)	
5	*Filed:* 01/27/2003 *Entered:* 01/28/2003	Praecipe
	Docket Text: PRAECIPE: by plaintiff re: issuance of summons (RS)	

Doc No.	Dates.	Description
6	*Filed:* 02/11/2003 *Entered:* 02/12/2003	Joint Status Report Order
	Docket Text: ORDER RE: INITIAL DISCLOSURES, JOINT STATUS REPORT AND EARLY SETTLEMENT, Joint Status Report due 3/21/03 (cc: counsel, Judge) (RS)	
7	*Filed:* 03/03/2003 *Entered:* 03/04/2003	Minute Order
	Docket Text: MINUTE ORDER: by Judge Barbara J. Rothstein; joint status report ddl extended 45 days (cc: counsel, Judge) (RS)	
8	*Filed:* 03/06/2003 *Entered:* 03/07/2003	Praecipe
	Docket Text: PRAECIPE: by plaintiff re: issuance of summons (RS)	
9	*Filed* 03/06/2003 *Entered:* 03/07/2003	Notice of Appearance
	Docket Text ATTORNEY APPEARANCE for defendant by James Ralph Dickens (RS)	
10	*Filed:* 03/10/2003 *Entered:* 03/11/2003	Amended Complaint
	Docket Text: AMENDED COMPLAINT [1-1] by plaintiff; addint Crist Cash, Deran Tarwater, Carma Heer, Scoth Borad, Crist Pozo, Ariel B, Crist B, Crist Vo, Deann S, Kamping S, Ming Loh, Paul Eng, Mark V, Moira Jones, Pete Lauradio, Rico Hanndes (RS)	
	Filed: 03/14/2003 *Entered:* 03/17/2003	Miscellaneous Document
	Docket Text: LODGED ORDER: re: motion to strike individual dfts and motion for protective order [11-1] (RS)	

Doc No.	Dates.	Description
11	*Filed:* 03/14/2003 *Entered:* 03/17/2003 *Terminated:* 04/07/2003	Motion for Miscellaneous Relief
	Docket Text: MOTION by defendant Fred Meyer to strike individual dfts and motion for protective order NOTED FOR 4/4/03 (RS)	
12	*Filed:* 03/14/2003 *Entered:* 03/17/2003	Declaration
	Docket Text: DECLARATION of James Dickens by defendant re motion to strike individual dfts and motion for protective order [11-1] (RS)	
13	*Filed:* 03/18/2003 *Entered:* 03/19/2003	Order
	Docket Text ORDER by Magistrate Judge MonicaJ. Benton DENYING pltf's motion for appointment of counsel [2-1] (cc: counsel, Judge) (RS)	
14	*Filed:* 03/25/2003 *Entered:* 03/26/2003 *Terminated:* 04/07/2003	Motion for Miscellaneous Relief
	Docket Text: MOTION by plaintiff George Ram Lama to keep individual dfts and motion to strike protective order NOTED FOR 4/11/03 (RS)	
15	*Filed:* 03/31/2003 *Entered:* 04/01/2003	Praecipe
	Docket Text: PRAECIPE: by plaintiff re: motion to keep individual dfts and motion to strike protective order [14-1] (RS)	

Doc No.	Dates.	Description
16	*Filed:* 04/03/2003 *Entered:* 04/04/2003	Reply
	Docket Text: REPLY brief by defendant on motion to dismiss and in response to cross-motion (MD)	
17	*Filed:* 04/07/2003 *Entered:* 04/08/2003	Order
	Docket Text: ORDER by Judge Barbara J. Rothstein finding pltf's motion to keep individual dfts and motion to strike protective order [14-1] MOOT, GRANTING IN PART AND DENYING IN PART dfts' motion to strike individual dfts and motion for protective order [11-1] (cc: counsel, Judge) (RS)	
18	*Filed:* 04/10/2003 *Entered:* 04/11/2003	Reply
	Docket Text: Brief REPLY by plaintiff to keep my motion and my reply to their the [sic] letter of 4/3/03 [16-1] (VK)	
19	*Filed:* 04/30/2003 *Entered:* 05/01/2003	Answer to Complaint
	Docket Text: ANSWER to amended complaint [10-1] by defendant Fred Meyer; jury demand (RS)	
20	*Filed:* 04/30/2003 *Entered:* 05/01/2003	Joint Status Report
	Docket Text: JOINT STATUS REPORT filed by all parties. (RS)	
21	*Filed:* 05/16/2003 *Entered:* 05/20/2003	Initial Disclosures
	Docket Text: INITIAL DISCLOSURES by plaintiff (RS)	

Doc No.	Dates.	Description
22	*Filed:* 05/27/2003 *Entered:* 05/29/2003	Initial Disclosures
	Docket Text: INITIAL DISCLOSURES by plaintiff George Ram Lama (RS)	
23	*Filed:* 06/12/2003 *Entered:* 06/16/2003	Order on Consent
	Docket Text: ORDER by Judge Barbara J. Rothstein on consent to proceed before a Magistrate Judge; case reassigned to Magistrate Judge Monica J. Benton (cc: counsel, Judge, Mag. Judge, Mag. Clk., Intake Clk.) (RS)	
24	*Filed &* *Entered:* 07/21/2003	Scheduling Order
	Docket Text: SCHEDULING ORDER: Jury Trial set for 1/12/2004 09:00 AM in Courtoom B before Hon. Monica J. Benton. Expert Witness Disclosure due by 7/16/2003. Motions due by 10/23/2003. Discovery due by 10/30/2003. Dispositive motions due by 10/30/2003. 39.1 Settlement Report due by 8/1/2003. Motions in Limine due by 12/15/2003. Pretrial Order due by 12/30/2003. Trial briefs to be submitted by 1/7/2004. Voir dire/jury instructions due by 1/7/2004. Signed by Judge Monica J. Benton (PV,)	
25	*Filed:* 10/22/2003 *Entered* 10/23/2003	Notice-Other
	Docet Text: NOTICE by Defendant of Withdrawal of Jury Demand Fred Meyer (PV,)	

Doc No.	Dates.	Description
26	*Filed:* 10/29/2003 *Entered:* 10/30/2003 *Terminated:* 01/08/2004	Motion to Compel
	Docket Text: MOTION to Compel Discovery, for Continuance, and to Issue Subpoenas, and Permit Amendment of Complaint by Plaintiff George Ram Lama. Noting Date 11/14/2003. (Attachments: #(1) Stipulations for Taking Deposition re: Heidi Malmstrom # (4) Stipulations for Taking Deposition re: Peter Laudadio # (5) Stipulations for Taking Deposition re: Daren Tarwater) Oral Argument Requested. (PV,)	
27	*Filed:* 10/29/2003 *Entered:* 10/30/2003	Declaration
	Docket Text: DECLARATION of George Ram Lama filed by Plaintiff George Ram Lama re [26] MOTION to Compel (PV,)	
28	*Filed:* 10/29/2003 *Entered:* 10/30/2003	Notice-Other
	Docket Text: NOTICE re: Motion to Compel Discovery, for Continuance & to Issue Subpoenas, and Permit Amendment of Complaint by Plaintiff George Ram Lama for 11-14-03 (PV,)	
29	*Filed & Entered:* 10/30/2003	Objections
	Docket Text: OBJECTIONS re [25] Notice-Other (Withdrawal of Jury Demand) by Plaintiff George Ram Lama. (PV,)	

Doc No.	Dates.	Description
30	*Filed:* 10/30/2003 *Entered:* 10/31/2003 *Terminated:* 01/08/2004	Motion for Summary Judgment
	Docket Text: MOTION for Summary Judgment by Defendant Fred Meyer. Noting Date 11/21/2003. (Attachments: # (1) proposed Order Granting Summary Judgment) (PV,)	
31	*Filed:* 10/30/2003 *Entered:* 10/31/2003	Declaration
	Docket Text: DECLARATION of Heidi Malmstrom filed by Defendant Fred Meyer re [30] MOTION for Summary Judgment (PV,)	
32	*Filed:* 10/30/2003 *Entered:* 10/31/2003	Declaration
	Docket Text: DECLARATION of James R. Dickens (with exhibits #1-7) filed by Defendant Fred Meyer re [30] MOTION for Summary Judgment (Attachments; # (1) Exhibit #8 – Transcript of Deposition of George Ram Lama) (PV,)	
33	*Filed:* 11/10/2003 *Entered:* 11/12/2003	Response to Motion
	Docket Text: RESPONSE filed by Defendant Fred Meyer re [26] MOTION to Compel (PV,)	
34	*Filed:* 11/10/2003 *Entered:* 11/12/2003	Declaration
	Docket Text: DECLARATION of James R. Dickens filed by Defendant Fred Meyer re [33] Response to Motion (PV,)	
35	*Filed:* 11/13/2003 *Entered:* 11/17/2003	Reply to Response to Motion
	Docket Text: REPLY to Response to Motion filed by Defendant Fred Meyer re [30]	

Doc No.	Dates.	Description
	MOTION for Summary Judgment (PV,)	
36	*Filed:* 11/15/2003 *Entered:* 11/20/2003	Response to Motion
	Docket Text: RESPONSE filed by Plaintiff George Ram Lama re [30] MOTION for Summary Judgment (Attachments: # (1) Exhibit labeled A-C)(PV,)	
37	*Filed:* 11/20/2003 *Entered:* 11/24/2003	Reply to Response to Motion
	Docket Text: REPLY to Response to Motion filed by Defendant Fred Meyer re [30] MOTION for Summary Judgment (PV,)	
38	*Filed:* 11/20/2003 *Entered:* 11/24/2003	Declaration
	Docket Text: DECLARATION of James R. Dickens re [37] Reply to Response to Motion by Defendant Fred Meyer. (PV,)	
39	*Filed:* 12/30/2003 *Entered:* 01/02/2004	Notice-Other
	Docket Text: NOTICE by Defendant Fred Meyer re: Pretrial Order (PV,)	
40	*Filed &* *Entered:* 01/08/2004	Order on Motion to Compel
	Docket Text: ORDER granting [30] Defendant's Motion for Summary Judgment and striking as moot [26] Motion to Compel Discovery signed by Judge Monica J. Benton. (RLW)	
49	*Filed &* *Entered:* 02/05/2004	Order on Motion for Bill of Costs
	Docket Text ORDER granting [43] Motion for Bill of Costs in the amount of $807.33 against Plaintiff George Ram Lama by Clerk U.S. District Court Bruce Rifkin (Rifkin, Bruce)	

Doc No.	Dates.	Description
--	*Filed &* *Entered:* 02/06/2004	Appeal Number from USCA
	Docket Text: USCA Case Number 04-35080 for [44] Notice of Appeal filed by George Ram Lama (ZG,)	
--	*Filed:* 02/25/2004 *Entered:* 03/01/2004	Appeal Fees
	Docket Text: Appeal Fees received: fee in the amount of $255.00 (receipt # 408537) re [44] Notice of Appeal filed by George Ram Lama (ZG,)	
51	*Filed:* 03/01/2004 *Entered:* 03/02/2004	Order
	Docket Text: ORDER of USCA (04-35080) as to [44] Notice of Appeal filed by George Ram Lama: Within 21 days appellant shall file filing fee or file motion for IFP (ZG,)	

George Ram LAMA, Plaintiff – Appellant,

v.

Fred MEYER, Defendant—Appellee.

No. 04-35080.

United States Court of Appeals,
Ninth Circuit.

Submitted Feb. 7, 2005.*

Decided Feb 11, 2005

Background: Plaintiff brought Title VII action against his supervisors, alleging retaliation, harassment and discrimination on the basis of race, color religion, political interests and national origin. The United States District Court for the Western District of Washington, Monica J. Benton, Magistrate Judge, granted summary judgment in favor of defendants. Plaintiff appealed.

Holding: The Court of Appeals held that plaintiff failed to prove discrimination on account of national origin in violation of Title VII, absent evidence that his supervisors scrutinized him more closely than other employees because he was Nepalese. Affirmed.

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* The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R.App. P. 34(a)(2).

1. Plaintiff failed to prove discrimination on account of national origin in violation of Title VII, where plaintiff failed to present any evidence that his supervisors scrutinized him more closely than other employees because he was Nepalese. Civil Rights Act of 1964, § 791 et seq, as amended, 42 U.S.C.A. § 2000e et seq.

2. Plaintiff failed to prove his Title VII hostile work environment claim absent any evidence that employers followed and profiled him on the basis of his national origin. Civil Rights Act of 1964, § 791 et seq, as amended, 42 U.S.C.A. § 2000e et seq.

3. Plaintiff's Title VII claims of discrimination based on race, color, religion, and political interests were properly dismissed based on failure to exhaust administrative remedies, where plaintiff did not include those claims in his charge filed with the Washington State Human Rights Commission and the Equal Employment Opportunity Commission (EEOC). Civil Rights Act of 1964, § 791 et seq, as amended, 42 U.S.C.A. § 2000e et seq.

George Ram Lama, Seattle Wa, pro se.

James R. Dickes, Esq., Miller Nash, LLP, Seattle, WA, for Defendants—Appellees.

Appeal from the United States District Court for the Western District of Washington, Monica J. Benton, Magistrate Judge, President. D.C. No. CV-03-00049-MJB.

Before: LEAVY, FERNANDEZ, and GOULD, Circuit Judges.

MEMORANDUM

[1] George Ram Lama appeals pro se the district court's summary judgment in favor of defendant in his Title VII action alleging retaliation, harassment and discrimination on the basis of race, color, religion, political interests and national origin. We have jurisdiction pursuant to 28 U.S.C. § 1291. We review de novo, *Delta Savings Bank v. United States* 265 F.3d 1017, 1021 (9th Cir.2001), and we affirm.

[2] The district court properly granted summary judgment on Lama's national origin claim because Lama failed to present any evidence that his supervisors scrutinized him more closely than other employees because he was Nepalese. *See McDonnell-Douglas Corp v. Green*, 411 U.S. 792, 802, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973) (setting forth prima facie case of disparate treatment).

The district court properly granted summary judgment on Lama's hostile work environment claim because Lama failed to present any evidence that defendants followed and profiled him on the basis of his national origin. *See Manatt v. Bank of Am., NA,* 339 F.3d 792, 798, 9th Cir. 2003).

The district court also properly granted summary judgment on Lama's retaliation claim because Lama failed to raise a genuine issue of material fact as to whether defendant retaliated against him for engaging in a protected activity. *See id.* at 800.

[3] The district court properly dismissed Lama's claims of discrimination based on race, color, religion and political interests because Lama did not include those claims in his charge filed with the Washington State Human Rights Commission and the Equal Employment Opportunity Commission.

See EEOCV. Farmer Bros. Co. 31 F.3d 891, 899 (9th Cir. 1994) (plaintiffs must exhaust administrative remedies before seeking federal adjudication of claims).

Lama's remaining contentions are unpersuasive.

AFFIRMED.

No. 07-863

FILED
JAN 18 2008
OFFICE OF THE CLERK
SUPREME COURT, U.S.

In The

Supreme Court of the United States

GEORGE RAM LAMA,

Petitioner,

v.

FRED MEYER, INC.,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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CORPORATE DISCLOSURE STATEMENT

Per Sup. Ct. R. 29.6, Respondent Fred Meyer, Inc. provides the following corporate disclosure statement.

Fred Meyer, Inc., is a Delaware corporation which is a wholly-owned subsidiary of The Kroger Co., an Ohio corporation. Fred Meyer Stores, Inc., the operating company, is an Ohio corporation which is a wholly-owned subsidiary of Fred Meyer, Inc. Petitioner George Ram Lama' was employed by the operating company Fred Meyer Stores, Inc. Except as clarified in this corporate disclosure statement, all parties appear in the caption.

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Fred Meyer, Inc. ("Fred Meyer" or Respondent) opposes the petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The initial memorandum opinion of the United States Court of Appeals for the Ninth Circuit was filed on July 16, 2007. *See* petitioner's appendix at pages 29-30 (his version of the July 16, 2007, opinion is not represented correctly as it was issued). The Ninth Circuit issued a corrected opinion on November 26, 2007. *See* Appendix A to this Opposition at pp. 1a-3a. The decision by the United States District Court for the Western District of Washington was not reported but an incomplete version is in petitioner's Appendix at pp. 19-21, 24-28. A complete version of the district court decision is in Appendix A hereto at pp. 4a-13a.

JURISDICTION

The opinion of the Court of Appeals for the Ninth Circuit was filed July 16, 2007, and a corrected opinion was issued on November 26, 2007. Therefore,

this Court has jurisdiction pursuant to 28 U.S.C. § 1254 and Sup. Ct. R. 13.1.

STATEMENT OF THE CASE

Petitioner Lama alleged national origin discrimination in his first lawsuit against respondent Fred Meyer which he filed on March 24, 2002, in the United States District Court for the Western District of Washington. This suit then was dismissed on January 8, 2004, on Fred Meyer's motion for summary judgment. The Court of Appeals for the Ninth Circuit affirmed the first dismissal in an unpublished memorandum opinion filed February 11, 2005.

After the court of appeals affirmed the dismissal of his first case, on March 9, 2005, petitioner Lama filed a second lawsuit in the United States District Court for the Western District of Washington alleging substantially the same claims against Fred Meyer as those he had alleged in his first suit, which the district court had dismissed and the court of appeals had affirmed.

After considering Fred Meyer's motion for summary judgment, on March 8, 2006, the district court dismissed the claims for national origin and age discrimination in the second lawsuit on *res judicata* grounds (identity of claims, identity of parties, failure to assert, and final judgment on the merits) and lack of subject matter jurisdiction because of failure to exhaust his administrative remedies before the

EEOC. Appendix B, p. 13a. The district court did not address the judicial estoppel or standing arguments. *Id.* The court of appeals affirmed this second dismissal on the same basis, Appendix A, pp. 2a-3a, in its memorandum decision filed July 16, 2007, and then in its corrected opinion issued on November 26, 2007.

REASONS FOR DENYING THE PETITION

This case fails to satisfy the standards set forth in Sup. Ct. R. 10(a) for accepting the writ of certiorari in the exercise of this Court's discretion. First, the decision by the Court of Appeals for the Ninth Circuit is not in conflict with the decision of any other court of appeals, nor does petitioner argue that it is. Second, the petition for writ of certiorari does not clearly set forth the legal questions presented for review by petitioner as required by Sup. Ct. R. 14.1(a).

As petitioner Lama acknowledges, "I consulted with over fifty private attorneys and was unable to find anyone to take my case." Petition at page 6. The EEOC and the Washington State Human Rights Commission told Lama that he had no case. *Id.* at 17. The district court and court of appeals properly concluded that, as a matter of law, Lama had no case. There is no legal issue to be decided by this Court, and certainly no legal issue in conflict with other courts of appeal or of significant public interest.

CONCLUSION

Petitioner Lama's claims have been found to be without merit by the district court in two separate lawsuits, and this lack of merit has been affirmed in two separate decisions by the court of appeals. Petitioner has not raised a clear question meriting review with this Court. The petition for a writ of certiorari should be denied.

Dated this 18th day of January, 2008.

Respectfully submitted,

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Counsel for Respondent

APPENDIX A

CORRECTED 11/26/2007+

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

GEORGE RAM LAMA, Plaintiff-Appellant, v. FRED MEYER, INC., Defendant-Appellee.	No. 06-35276 D.C. No. CV-05-00385-JCC MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
John C. Coughenour, Chief District Judge,
Presiding

Submitted July 9, 2007**

Before: LEAVY, THOMAS, and BERZON,
Circuit Judges.

George Ram Lama appeals pro se from the district court's summary judgment in his Title VII action alleging that his former employer, Fred Meyer,

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* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Inc., discriminated against him based on his national origin and age, and retaliated against him for complaining about harassment. We have jurisdiction under 28 U.S.C. § 1291. We review de novo, *Buono v. Norton*, 371 F.3d 543, 545 (9th Cir. 2004), and we affirm.

The district court properly dismissed Lama's claims of retaliation and discrimination based on his national origin because these claims were considered and rejected in a prior action for failure to establish a prima facie case. +*See Western Radio Servs. Co. v. Glickman*, 123 F.3d 1189, 1192 (9th Cir. 1997) (doctrine of res judicata bars a claim where there is an identity of claims, an identity of parties, and a final judgment on the merits).

The district court properly dismissed Lama's claim of age discrimination because Lama could have raised that claim in his prior action. *See Gregory v. Widnall*, 153 F.3d 1071, 1074 (9th Cir. 1998) (per curiam) (barring under res judicata "all grounds for recovery which could have been asserted, whether they were or not, in a prior suit between the same parties on the same cause of action.") (internal quotations omitted).

To the extent Lama's complaint alleges that defendants discriminated against him in 2004, the district court properly dismissed this claim for lack of subject matter jurisdiction because Lama did not exhaust his administrative remedies with the Equal Employment Opportunity Commission ("EEOC") as

to any conduct alleged to have occurred after October 2003. *See Lyons v. England*, 307 F.3d 1092, 1103-04 (9th Cir. 2002) (federal subject matter jurisdiction requires a plaintiff to exhaust administrative remedies before seeking adjudication of a Title VII claim by filing a timely charge with the EEOC).

Lama's remaining contention lacks merit.

AFFIRMED.

APPENDIX B

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

GEORGE RAM LAMA, Plaintiff, v. FRED MEYER, INC., Defendant.	CASE NO. C05-385C ORDER

This matter comes before the Court on (1) Defendant's Motion for Summary Judgment (Dkt. No. 14) ("Def.'s Mot."), Plaintiff's responsive documents (Dkt. Nos. 21, 23, 24) ("Pl.'s 1st Opp'n"), Defendant's Reply (Dkt. No. 28) ("Def.'s Reply"), and Plaintiff's objection thereto (Dkt. No. 29) ("Pl.'s 2nd Opp'n"); and (2) this Court's December 21, 2005 Show Cause Minute Order (Dkt. No. 30) and the papers filed in response thereto (Dkt. Nos. 31 ("Pl.'s OSC Resp."), 32 ("Defs.' OSC Opp'n"), and 34 ("Pl.'s OSC Reply")). The Court has considered the papers submitted regarding summary judgment and determined that oral argument is not necessary. The Court hereby finds and rules as follows.

I. BACKGROUND

Plaintiff George Ram Lama is a former employee of Defendant Fred Meyer – Plaintiff worked for

Defendant from August 14, 2000 to March 11, 2004. He is 55 years old and is of Nepalese origin. The instant suit is Plaintiff's second against Defendant. Plaintiff also is a debtor in bankruptcy proceedings in the Western District of Washington, wherein his debts were discharged under 11 U.S.C. § 727. Plaintiff proceeds *pro se* in the instant litigation.

On March 24, 2002, Plaintiff filed a complaint alleging national origin discrimination with the Equal Employment Opportunity Commission ("EEOC") and the Washington State Human Rights Commission ("WSHRC"). This complaint resulted in determinations by both agencies that there was no reasonable cause for Plaintiff's discrimination charge. (*See* Def.'s Mot., Dickens Decl. Exs. 1, 2.) Upon receipt of his right-to-sue letter, Plaintiff filed, in January 2003, an employment discrimination action against Defendant Fred Meyer and its employees (who were later dismissed). (*See* C03-49R, Order (Dkt. No. 17); Def.'s Mot., Dickens Decl. Ex. 3 (C03-49R, Amended Complaint).)

On January 8, 2004, this Court granted Fred Meyer's motion for summary judgment and dismissed all claims against it. (Def.'s Mot., Dickens Decl. Ex. 4 (C03-49MJB, Order).) The Court ruled in the first case that Plaintiff failed to exhaust his administrative remedies as to claims of failure to promote, race/color discrimination, religious discrimination, and political interest discrimination, and therefore the Court had no subject matter jurisdiction to consider such claims. (*Id.*) The Court also granted summary judgment on

the *national origin* discrimination claim, finding that Plaintiff failed to make out a hostile work environment claim. (*Id.*) The Court then ruled on Plaintiff's late-addition *retaliation* claim, finding that the record contained "no evidence showing a causal link between the protected activity and the adverse action," which precluded a *prima facie* case of retaliation. (*Id.* at 8.) Plaintiff appealed, but the Ninth Circuit affirmed the dismissal. (*Id.* Ex. 6.) Defendant was awarded $807.33 in costs in that case on February 5, 2004. (*Id.* Ex. 5.)

Following the final judgment in his first case against Fred Meyer, Plaintiff filed a second complaint with the EEOC and WSHRC on January 22, 2004. (*Id.* Ex. 7.) He again claimed retaliation, relying on facts that occurred before the dismissal of his first case, and again claimed national origin discrimination. (*Id.*) A new claim was made regarding *age* discrimination as well, though the acts alleged to support this charge also fell between June 1, 2003 and October 24, 2003 – a period completely within the pendency of his first action (which began on January 10, 2003 and was dismissed on January 8, 2004). (*Id.*)

While that discrimination complaint was pending before the EEOC, Plaintiff filed a Chapter 7 bankruptcy petition on March 9, 2004. (*Id.* Ex. 9 (04-13139KAO, Petition, Schedules, and Statements).)[1]

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[1] Plaintiff was represented by an attorney in the bankruptcy matter. (*Id.*) The bankruptcy petition included references

(Continued on following page)

On June 16, 2004, Plaintiff's debts were discharged. (*Id.* Ex. 10 (04-13139KAO, Discharge of Debtor).) Thereafter, the EEOC dismissed Plaintiff's second complaint, again unable to find a violation; Plaintiff's second right-to-sue letter was dated January 6, 2005. (*Id.* Ex. 8.) On March 9, 2005, a year after he had filed for bankruptcy, Plaintiff initiated the instant civil action alleging employment discrimination against Defendant, seeking "$1.4 million or Back pay, future pay and Punitive damages." (Complaint (Dkt. No. 1).) Specifically, Plaintiff now seeks damages for failure to promote, harassment/profiling, retaliation, race/color discrimination, national origin discrimination, and age discrimination. (*Id.*)

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to Plaintiff's costs debt from his first lawsuit against Defendant (*see id.* (Schedules B, C; Statement of Financial Affairs)), but the petition did *not* contain any information about the then-active investigation on Plaintiff's second charge of discrimination with the EEOC or any possible cause of action against Defendant (*id.* (Statement of Financial Affairs)). Specifically, the Statement of Financial Affairs instructed the debtor to "[l]ist all suits and administrative proceedings to which the debtor is or was a party within **one year** immediately preceding the filing of this bankruptcy case." (*Id.*) The only proceeding listed in response was the taxation of costs for Plaintiff's first lawsuit against Defendant. No mention was made of the open EEOC proceeding. Nor was the possible claim against Defendant listed as an "asset" anywhere else on the petition.

II. ANALYSIS

A. Summary Judgment Standard

Rule 56 of the Federal Rules of Civil Procedure governs summary judgment motions, and provides in relevant part, that "[t]he judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." FED. R. CIV. P. 56(c). In determining whether an issue of fact exists, the Court must view all evidence in the light most favorable to the non-moving party and draw all reasonable inferences in that party's favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-50 (1986); *Bagdadi v. Nazar*, 84 F.3d 1194, 1197 (9th Cir. 1996). A genuine issue of material fact exists where there is sufficient evidence for a reasonable factfinder to find for the non-moving party. *Anderson*, 477 U.S. at 248. The moving party bears the burden of showing that there is no evidence which supports an element essential to the non-movant's claim. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). Once the movant has met this burden, the non-moving party then must show that there is in fact a genuine issue for trial. *Anderson*, 477 U.S. at 250. Thus, the inquiry on a motion for summary judgment is "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." *Anderson*, 477 U.S. at 251-52.

B. Issues on Summary Judgment

Defendant seeks dismissal of all claims against it on three grounds. First, Defendant argues that Plaintiff's suit is barred by the doctrine of judicial estoppel because Plaintiff failed to notify the bankruptcy court of his possible causes of action against Defendant – the theory is that Plaintiff should not be allowed the double benefit of having had his debts discharged without regard for the value of the instant claims (which he knew about before filing for bankruptcy) while now being allowed to pursue those claims debt-free and outside bankruptcy proceedings. Second, Defendant argues that Plaintiff does not have standing to bring the claims in this suit in any event, because he had a duty to disclose the claims to the bankruptcy court, did not do so, and as a result of that failure, the bankruptcy trustee is the real party in interest. Third, Defendant argues that *res judicata* bars Plaintiff's current suit altogether. Because the *res judicata* argument is dispositive, as discussed below, the Court need not reach the standing or judicial estoppel arguments.

C. *Res Judicata* and Subject Matter Jurisdiction

In general, the doctrine of *res judicata* bars a second suit on the same claim or on different claims arising from the same facts. Thus, the bar reaches both grounds of recovery that were asserted and those that were not asserted but could have been.

Int'l Union of Operating Eng'rs v. Karr, 994 F.2d 1426, 1429 (9th Cir. 1993). The 3-part test for *res judicata* asks whether the earlier suit "'(1) involved the same "claim" or cause of action as the later suit, (2) reached a final judgment on the merits, and (3) involved identical parties or privies.'" *Mpoyo v. Litton Electro-Optical Systems*, 430 F.3d 985, 987 (9th Cir. 2005) (quoting *Sidhu v. Flecto Co.*, 279 F.3d 896, 900 (9th Cir. 2002)).

As to the first element ("same claim"), the Court must consider the following factors: (a) "whether the two suits arise out of the same transactional nucleus of facts"; (b) "whether rights or interests established in the prior judgment would be destroyed or impaired by prosecution of the second action"; (c) "whether the two suits involved infringement of the same right"; and (d) "whether substantially the same evidence is presented in the two actions." *Id.* (citing *Chao v. A-One Med. Servs., Inc.*, 346 F.3d 908, 921 (9th Cir. 2003)). Whether the two suits arise out of the same "transactional nucleus of facts" is considered the most important of the foregoing factors, often becoming "outcome determinative" as to the first *res judicata* element. *Mpoyo*, 430 F.3d at 988.

The "nucleus of facts" factor is significant in this case. Plaintiff's claims here, as in his prior lawsuit, center on Defendant's conduct regarding "profiling," suspending, refusing to promote, and assigning certain work to Plaintiff. The period of time in which these events allegedly occurred (according to the EEOC complaint underlying the instant suit) ends in

October 2003, which is prior to the dismissal of Plaintiff's first suit. Thus, Plaintiff clearly could have raised all of his claims in the first lawsuit, either with the EEOC or with the Court.

This Court had no subject matter jurisdiction in the first lawsuit to consider claims on the merits that were not raised properly before the EEOC prior to commencing the first lawsuit. These included the claims for failure to promote, race/color discrimination, religious discrimination, and political interest discrimination. However, this Court did consider the national origin and retaliation claims on the merits, granting summary judgment for Defendant because Plaintiff could not make out the basic elements of those claims. Thus, the only claim at issue here that was *not* addressed by the Court in the first lawsuit is the *age* claim that Plaintiff now raises. However, here too, Plaintiff fails to raise a genuinely new claim, because the age discrimination claim arises out of the same nucleus of facts and period of conduct as all of the other claims from the first lawsuit. Plaintiff could have raised the age claim in the first lawsuit, but he did not do so. Therefore, *all* conduct alleged in the instant suit that occurred prior to October 2003 already was litigated or could have been litigated in Plaintiff's first lawsuit.

Plaintiff's attempt to escape the "nucleus of facts" test by characterizing his current retaliation and failure-to-promote claims as involving "new" conduct occurring in 2004 (*i.e.*, after October 2003) (Pl.'s OSC Resp. 3-4) fails because he has not exhausted his

administrative remedies as to conduct after October 2003. The EEOC complaint underlying the instant suit makes no mention of conduct after October 2003 (*see* Def.'s Mot., Dickens Decl. Ex. 7), so this Court lacks subject matter jurisdiction to consider any claim based on any conduct in 2004. *Lyons v. England*, 307 F.3d 1092, 1103 (9th Cir. 2002); *B.K.B. v. Maui Police Dep't*, 276 F.3d 1091, 1099 (9th Cir. 2002).

The foregoing "nucleus of facts" inquiry favors a finding that the current suit involves the "same claim" as the prior suit. The other relevant factors favor such a finding as well. First, Plaintiff's current suit involves claims about rights that already have been determined – this Court's determination that Defendant could not be held liable for national origin discrimination or retaliation in the prior lawsuit would be "destroyed" if the present suit is allowed to continue. Second, the "same rights" are raised here as before, with the exception of the age claim (which should have been joined before) and the post-October 2003 claims (over which this court lacks jurisdiction). Finally, as to the claims involving pre-October 2003 conduct, the "same evidence" presented here also was presented (or could have been presented) in the prior lawsuit and/or in the prior administrative proceeding.

Considering all four factors going to the "same claim" element of the *res judicata* test, the Court finds that, to the extent that the underlying conduct extends through October 2003, Plaintiff's current suit does involve the "same claim" as his prior lawsuit. Any such claim that was not actually brought in

the first lawsuit *could have been brought* therein. Further, regarding conduct after October 2003, this Court lacks subject matter jurisdiction due to Plaintiff's failure to exhaust administrative processes.

The second and third elements of the *res judicata* test are satisfied here as well. As to the second element, summary judgment dismissal of the first suit generally "is considered a decision on the merits for *res judicata* purposes." *Mpoyo*, 430 F.3d at 988 (citing *Hells Canyon Pres. Council v. U.S. Forest Serv.*, 403 F.3d 683, 686 (9th Cir. 2005)). Any claims administratively raised in the current suit were capable of being brought in the first suit that was dismissed with prejudice. Likewise, the third element – identical parties – is established, because both Plaintiff and Defendant were in identical postures in the prior litigation.

For the foregoing reasons, all of Plaintiff's claims depending on conduct that occurred through October 2003 must be dismissed under the doctrine of *res judicata*, and all of Plaintiff's claims depending on conduct that occurred after October 2004 must be dismissed for lack of subject matter jurisdiction. Viewing the facts in the light most favorable to Plaintiff, it is clear that he has failed to raise any genuine issue of material fact that would preclude dismissal of his claims as a matter of law. Because no claims can survive the *res judicata* and subject matter jurisdiction inquiries, the Court need not

address Defendant's judicial estoppel or standing arguments.[2]

III. CONCLUSION

Defendant's motion for summary judgment is GRANTED for the reasons set forth in section II.C of this Order.

SO ORDERED this 8th day of March, 2006.

/s/ _____
John C. Coughenour
United States District Judge

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[2] Furthermore, Defendant's alternative request for a stay in this matter pending payment by Plaintiff of costs ordered in the first lawsuit against it is MOOT, as Plaintiff now has paid the $807.33 cost bill in full. (*See* Notice (Dkt. No. 25); Payment (Dkt. No. 26); Def.'s Reply.)